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ABSTRACT

The training manual is designed to prepare Naval personnel for advancement in the Legalman rating and for providing quality legal service to Navy personnel. Chapter 1 discusses the specific requirements of the rating, the responsibilities of the petty officer, the Navy advancement system, and the assignment possibilities for Legalmen. Chapters 2-14 cover the following topics: office procedures and security, the law library--its use and maintenance, legal reporting, preliminary constitutional considerations, nonjudicial punishment, pretrial, trial procedures, posttrial, delivery of personnel, administrative discharges, fact-finding bodies, claims, and legal assistance. Numerous diagrams and illustrations are provided throughout the document. The document concludes with three appendixes: verbatim record of trial, summarized record of trial, and a glossary of terms in military law. (BP)

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# LEGALMAN 2, 1 & C

JUN 27 1975

NAVAL EDUCATION AND TRAINING COMMAND

RATE TRAINING MANUAL

NAVEDTRA 10455

# PREFACE

This rate training manual was prepared by the Naval Education and Training Program Development Center, Pensacola, Florida, for the Naval Education and Training Command. Technical assistance was furnished by the Office of the Judge Advocate General, Washington, D.C.; the Bureau of Naval Personnel, Washington, D.C; and the Naval Justice School, Newport, R.I..

Since this text was written, Navy Law Centers have been redesignated as separate commands. Accordingly, any reference in the text to "law center" or "Director, Navy Law Center" should be understood to read "Naval Legal Services Office" or "Officer in Charge, Naval Legal Services Office" respectively.

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# THE UNITED STATES NAVY

## GUARDIAN OF OUR COUNTRY

The United States Navy is responsible for maintaining control of the sea and is a ready force on watch at home and overseas, capable of strong action to preserve the peace or of instant offensive action to win in war.

It is upon the maintenance of this control that our country's glorious future depends; the United States Navy exists to make it so.

## WE SERVE WITH HONOR

Tradition, valor, and victory are the Navy's heritage from the past. To these may be added dedication, discipline, and vigilance as the watchwords of the present and the future.

At home or on distant stations we serve with pride, confident in the respect of our country, our shipmates, and our families.

Our responsibilities sober us; our adversities strengthen us.

Service to God and Country is our special privilege. We serve with honor.

## THE FUTURE OF THE NAVY

The Navy will always employ new weapons, new techniques, and greater power to protect and defend the United States on the sea, under the sea, and in the air.

Now and in the future, control of the sea gives the United States her greatest advantage for the maintenance of peace and for victory in war.

Mobility, surprise, dispersal, and offensive power are the keynotes of the new Navy. The roots of the Navy lie in a strong belief in the future, in continued dedication to our tasks, and in reflection on our heritage from the past.

Never have our opportunities and our responsibilities been greater.

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# CREDITS

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## Chapter 1

# THE LEGALMAN

In January 1972 the Secretary of the Navy approved the establishment of the new general rating of Legalman (LN). This new rating of paralegal specialists is limited to grades E-5 through E-9 with the Yeoman rating serving as the primary source of personnel. The concept is that personnel in the rating will perform duties somewhere between those of the "legal yeoman," and those of a judge advocate, thereby accomplishing three goals:

- Enhancing the position of enlisted members connected with naval legal affairs by granting them increased authority and responsibility.
- Providing improved legal service to Navy members in conformance with existing regulations.
- Achieving maximum use of Navy judge advocates by relieving them from a variety of ministerial functions.

The scope of the rating is as broad as the Navy legal system itself. Under the guidance of Navy lawyers, Legalmen will perform duties which include matters concerned with military justice, administrative discharges, claims, admiralty law, and legal assistance. They will conduct interviews, perform legal research, and provide advice and assistance to personnel on matters of legal administration. They will record and transcribe courts and inquiries; they will prepare legal documents and correspondence. This concept mirrors development in the civilian legal community where many areas of legal services are being provided by competent trained personnel under the supervision of qualified lawyers.

This training manual is designed to prepare you for advancement in the Legalman rating and for providing quality legal service to Navy personnel. Before turning in subsequent chapters to the specific requirements of the rating, a quick look at your responsibilities as a petty officer, at the Navy advancement system, and at assignment possibilities for Legalmen is in order.

## INCREASING RESPONSIBILITIES

As a beginner in the Legalman rating, you will be chiefly concerned with acquiring the knowledge and skills necessary to perform the duties listed above. As you advance in the rating, you will increase and perfect these skills. In addition you will increasingly be assigned to billets where you will be responsible for the supervision and training of junior rated men and strikers.

Your responsibilities will extend both upward and downward. In dealing with your juniors, it is up to you to see that they do their work properly. At the same time, you must be able to explain to officers and senior petty officers any important needs or problems of your men.

You will have regular and continuing responsibilities for training. Even if you are lucky enough to have a highly skilled and well trained group, training will always be necessary. You will be responsible for training each man on your team to take over more difficult and more responsible jobs. The men will want to advance to higher pay levels, and they can do so only by increasing their value to the Navy. You must be able to conduct formal and informal training programs to qualify personnel for advancement and train individuals and groups in the effective execution of assigned tasks.

You will have increasing responsibilities for working with others. As you advance you will find that some of your plans and decisions affect a large number of people. It becomes increasingly important, therefore, to understand the duties and responsibilities of others.

As your responsibilities increase, the necessity to communicate clearly and effectively also increases. The basic requirement for effective communication is a knowledge of language. Use correct and simple English. To lead, supervise, and train others you must be understood. If one of your men has not understood what you've told him, don't automatically put the blame on him. Consider how you might have said it more clearly.

Use correct and precise technical terms. In law, mastery of a large technical vocabulary is necessary.

You must keep yourself informed about all changes and developments that might affect your work or your rating. Some changes will be called directly to your attention, but others you will have to look for. Read all available sources of information.

## THE NAVY ENLISTED ADVANCEMENT SYSTEM

Many of the rewards of Navy life are earned through the advancement system. The basic ideas behind the system have remained stable for many years, but specific portions may change rather rapidly. It is important that you know the system and follow changes carefully. BuPers Notices 1418 will normally keep you up to date.

The normal system of advancement may be easier to understand if it is broken into two parts:

1. Those requirements that must be met before you may be considered for advancement.
2. Those factors that actually determine whether or not you will be advanced.

## QUALIFYING FOR ADVANCEMENT

In general, to QUALIFY (be considered) for advancement, you must first:

1. Have a certain amount of time in pay grade.
2. Demonstrate knowledge of material in your mandatory Rate Training Manuals by achieving a suitable score on your command's test, by successfully completing the appropriate NRCC's or, in some cases, by successfully completing an appropriate Navy school.
3. Demonstrate the ability to perform all the practical requirements for advancement by completing the Record of Practical Factors, NavEdTra 1414/1.
4. Be recommended by your commanding officer.
5. For petty officer third and second candidates ONLY, demonstrate knowledge of military subjects by passing a locally administered MILITARY/LEADERSHIP examination based on the military qualifications for advancement (from NavPers 10068 series).
6. Demonstrate knowledge of the technical aspects of your rate by *passing* a Navywide advancement examination based on the occupational qualifications applicable to your rate (from NavPers 10068 series, those quals listed at and below your rate level).

If you meet all of the above requirements satisfactorily, you become a member of the group from which advancements will be made.

## WHO WILL BE ADVANCED?

Advancement is not automatic. Meeting all of the requirements makes you eligible but does not guarantee your advancement. Some of the factors that determine which persons, out of all of those QUALIFIED, will actually be advanced in rate are the score made on the advancement examination, the length of time in service, the performance marks earned, and the number of vacancies being filled in a given rate.

If the number of vacancies in a given rate exceed the number of qualified personnel, then ALL of those qualified will be advanced. More often, the number of qualified people exceeds the vacancies. When this happens, the Navy has devised a procedure for advancing those who are BEST qualified. This procedure is based on combining three personnel evaluation systems:

Merit rating system (Annual evaluation and C.O. recommendation)
Personnel testing system (Advancement examination score—with some credit for passing previous advancement exams)
Longevity (seniority) system (Time in Rate and Time in Service)

Simply, credit is given for how much the individual has achieved in the three areas of performance, knowledge, and seniority. A composite, known as the final multiple score, is generated from these three factors. All of the qualified candidates from a given advancement examination population are then placed on one list, based on this composite figure, the highest achiever first, and so on down to the last qualified person in the population. For candidates for E4, E5, and E6, advancement authorizations are then issued, beginning at the top of the list, for the number of persons needed to fill the existing vacancies. Candidates for E7 whose final multiple scores are high enough will be designated PASS SELBD ELIG (Pass Selection Board Eligible). This means that their names will be placed before the Chief Petty Officer Selection Board, a BuPers board charged with considering all so-designated eligible candidates for advancement to CPO. Advancement authorizations for those being advanced to CPO are issued by this board.

Who, then, are the individuals who are advanced? Basically, they are the ones who achieved the *most* in preparing for advancement. They were not content to just qualify; they went the extra mile in their training, and through that training and their work experience they developed greater skills, learned more, and accepted more responsibility.

While it cannot guarantee that any one person will be advanced, the advancement system does guarantee that all persons within a particular rate will compete equally for the vacancies that exist.

## KEEPING CURRENT ON ADVANCEMENT

Remember that the requirements for advancement may change from time to time. Check with your division officer or with your training officer to be sure you have the most recent requirements when you are preparing for advancement and when you are helping lower rated men to prepare.

To prepare for advancement, you need to be familiar with (1) the military requirements and the occupational qualifications given in the *Manual of Qualifications for Advancement*, NAVPERS 18068C (with changes); (2) the Record of Practical Factors, NAVTRA 1414/1; (3) appropriate rate training manuals; and (4) any other material that may be required or recommended in the current edition of *Bibliography for Advancement Study*, NAVEDTRA 10052.

## SOURCES OF INFORMATION

It is very important to you to have an extensive knowledge of the references to consult for detailed, authoritative, up-to-date information on all subjects related to the military requirements and to the occupational qualifications of the Legalman rating.

The official publications that prescribe the regulations and procedures governing the occupational duties of the rating are discussed in later chapters of this manual. Discussed below are additional publications that you should use for training purposes.

### QUALS PUBLICATIONS

*The Manual of Qualifications for Advancement*, NAVPERS 18068C (with changes), gives the minimum requirements for advancement to each rate within each rating. The *Quals Manual* lists the military requirements which apply to all ratings and the occupational qualifications that are specific to each rating.

The *Quals Manual* is kept current by means of numbered changes. These changes are issued more frequently than most rate training manuals can be revised; therefore, the training manuals cannot always reflect the latest qualifications for advancement. When preparing for advancement, you should always check the LATEST *Quals Manual* and the LATEST change to be sure that you know the current requirements for advancement in your rating.

Remember these three things about quals:

1. The quals are the MINIMUM requirements for advancement to each rate within each rating. If you study more than the required minimum you will, of course, have a great advantage when you take the written examination for advancement.

2. Each qual has a designated pay grade—E-5, E-6, E-7, E-8, or E-9. You are responsible for meeting all quals specified for advancement to

the pay grade to which you are seeking advancement AND all quals specified for lower pay grades.

3. The written examinations for advancement to E-6 and above contain questions relating to the practical factors and the knowledge factors of BOTH leadership requirements and occupational qualifications. Personnel preparing for advancement to E-5 must pass a separate military/leadership examination prior to participation in the Navywide occupational examination. The military/leadership examinations for the E-4 and E-5 levels are given according to a schedule prescribed by the commanding officer. Candidates are required to pass the applicable military/leadership examination only once.

### Record of Practical Factors

A special form known as the Record of Practical Factors, NAVTRA 1414/1 (formerly NAVPERS 1414/1), is used to record the satisfactory completion of the practical factors, both military and occupational, listed in the *Quals Manual*. This form is available for each rating. Whenever a person demonstrates his ability to perform a practical factor, appropriate entries must be made in the DATE and INITIALS columns. As you become increasingly senior, you will often be required to check the practical factor performance of your men and to report the results to your supervising officer. To facilitate record keeping, group records of practical factors are often maintained aboard ship. Entries from the group records must, of course, be transferred to each individual's Record of Practical Factors at appropriate intervals.

Extra space is allowed on the Record of Practical Factors for entering additional practical factors as they are published in changes to the *Quals Manual*. The Record of Practical Factors also provides space for recording demonstrated proficiency in skills which are within the general scope of the rating but which are not identified as minimum qualifications for advancement. Keep this in mind when you are training and supervising lower rated personnel. If a man demonstrates proficiency in some skill which is not listed in the Legalman quals but which falls within the general scope of the rating, report this fact to the supervising officer so that an appropriate entry can be made.

The Record of Practical Factors should be kept in each man's service record and should be forwarded with the service record to the next duty station. Each man should also keep a copy of the record for his own use. Tell your men about the necessity of the PFR for advancement. Instruct them to check periodically to see that it is up to date.

## NAVEDTRA PUBLICATIONS

As a result of the establishment of the Naval Education and Training Support Command under the Chief of Naval Education and Training, new editions of training publications formerly designated with the abbreviation NAVPERS or NAVTRA are being designated with NAVEDTRA. The numerals and the edition designators remain unchanged. This training manual, for instance, is NAVEDTRA 10455 which means that it is the first edition of a Naval Education and Training Support Command publication. The first revision will be NAVEDTRA 10455A.

In this chapter and elsewhere in this text, training publications which already carry the new abbreviation are listed that way; those not yet changed are listed by NAVPERS numbers.

Training publications are of several types. The most numerous are the training manuals, correspondence courses; and curriculum materials, all of which are designed to provide instruction or guidance in learning a specific Navy subject. Other publications provide listings of courses and study materials and other general information of use to trainees, supervisors, and instructors.

### Bibliography for Advancement Study

*The Bibliography for Advancement Study*, NAVEDTRA 10052-(series) lists required and recommended rate training manuals and other reference material to be used by personnel preparing for advancement. The *Bibliography* is revised and issued once a year by the Naval Education and Training Support Command. Be sure you have the latest edition.

Rate training manuals that are marked with an asterisk (*) in NAVEDTRA 10052 are

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MANDATORY at the indicated rate levels. A mandatory training manual may be completed by (1) passing the appropriate enlisted correspondence course based on the mandatory manual, (2) passing locally prepared tests based on the information given in the mandatory manual, or (3) in some cases, successfully completing an appropriate Navy school.

Remember, all references, whether mandatory or recommended, may be used as source material for the advancement examinations. Also, remind your men that they are responsible for all references at lower rate levels.

### List of Training Manuals and Correspondence Courses

The *List of Training Manuals and Correspondence Courses*, NAVEDTRA 10061, contains lists of all training manuals published by the Navy, a description of the naval correspondence course program with lists of all correspondence courses available, and lists of leadership publications. The listings are both alphabetical and numerical, and there is a cross reference list of publication numbers to Navy stock numbers. The list is revised annually. It is the basic source of information as to what is available in the various subject areas and the publication date and edition designator of the current edition of each publication.

### Rate Training Manuals

Rate training manuals are written for the specific purpose of helping personnel prepare for their duties and for advancement. Some courses are general in nature and are intended for use by more than one rating; others (such as this one) are specific to the particular rating.

Each time a rate training manual is revised, it is brought into conformance with the official publications and directives on which it is based; but during the life of any edition, discrepancies between the manual and the official sources are almost sure to arise because of changes to the latter which are issued in the interim. In the performance of your duties, you should always refer to the appropriate official publication or directive. If the official source is listed in NAVEDTRA 10052 and, therefore, is a source used by the Naval Education and Training Program Development Center in preparing the advancement examinations, the Center will resolve any discrepancy of material by using the most recent.

### Customer Service Manual

The Legalman rating is one of several for which the *Navy Customer Service Manual*, NAVPERS 10119, is mandatory. Use this publication in training sessions to introduce discussions of the attitudes and behaviors that characterize excellent customer service. More importantly, practice the cooperative spirit which it preaches.

## TRAINING FILMS

Training films available to naval personnel are a valuable source of supplementary information on many technical subjects. Training films are listed in the *United States Navy Film Catalog*, NAVAIR 10-1-777, published 1 July 1971. Copies may be ordered in accordance with the *Navy Stock List of Forms and Publications*, NAVSUP 2002. Supplements to the *Film Catalog* are distributed to catalog holders.

When selecting a film, note its date of issue listed in the *Film Catalog*. A film which is obsolete only in part may sometimes be shown effectively if, before or during its showing, you carefully point out to trainees the procedures that have changed. For this reason if you are showing a film to train other personnel, take a look at it in advance so that you may spot material that may have become obsolete and verify current procedures by looking them up in the appropriate sources before the formal showing.

## ASSIGNMENTS

At the time the Legalman rating was established, billets were established for 426 Legalmen. The Office of the Judge Advocate General of the Navy intends to send all Legalmen, including those who have previously attended court reporting school, to the Naval Justice

School at Newport, R.I., as soon as possible after initial designation as a Legalman. In view of funding limitations in effect at the time this RTM is being written, it appears that Legalmen will be sent TDY to Justice School enroute to their first assignment after designation as Legalmen.

Following Justice School (and in those cases where monetary restrictions preclude sending the Legalman to Justice School), Legalmen can expect a tour of duty at one of the Navy's law centers, to which more than half of the Legalmen will be assigned at any one time. At a law center, a Legalman might be called upon to perform almost any one of the duties enumerated at the beginning of this chapter. For example, he might be a court reporter; he might do tax work in the legal assistance office; he might assist counsel in a court-martial by doing legal research and drafting legal documents; he might be a claims investigator. Further, he can expect to be rotated among several such duties during a full tour at a law center.

The more senior Legalmen may anticipate assignments as Legalman in support of judge advocates in independent billets (this includes most of the 30 afloat Legalman billets). At these commands duties quite similar to those at law centers can be expected; variations can be anticipated in degree but not in kind. It is, then, apparent to you that Legalmen assigned in support of independent billets will need to be well versed in all phases of the rating. Because there will most likely be no other Legalmen to lean on and learn from, only Legalmen E-6 and above will be given these assignments.

And a final word about the Legalman rating. Legalmen will be performing duties more complex and sophisticated than those duties previously assigned to "legal yeomen." The formalization of the new rating has led to increased proficiency and expertise of those who work in the Navy legal system. At the same time, Legalmen must avoid the temptation to be "sea lawyers." A devotion to the precepts of justice and a willingness to provide service to your fellow Navymen and women should guarantee that your career as a Navy Legalman will be interesting, challenging, and personally satisfying.

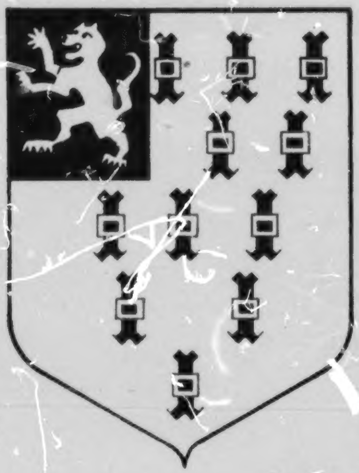
## ABOUT YOUR RATING INSIGNIA

Although the Legalman rating is one of the newest in the Navy, its insigne and that of the JAG Corps is of very ancient origins. The "Mill Rinde," which forms an integral part of both the JAG Corps officer's device and the Legalman rating insigne, is the mark which signifies the legal profession. Therefore, information concerning how it came to be adopted for Navy use has been included in this discussion.

### THE "MILL RINDE"

During the search for an appropriate JAG Corps distinguishing device, the attention of the committee studying the issue was attracted to the coats of arms of the four Inns of Court which have controlled the bar in England for many centuries. As a matter of interest, the coat of arms of the Middle Temple contains a holy lamb bearing a banner; that of the Inner Temple, a Pegasus or winged horse; that of Gray's Inn, a "griffon sergeant"; and that of Lincoln's Inn, "fifteen terdemoulins plus a lion rampant," as pictured in figure 1-1.

As the committee delved deeper into the symbols inscribed on the crests of the Inns of Court, they came to realize that the "terdemoulin" blazoned on the arms of Lincoln's Inn represented a symbol which for many hundreds of years has been intimately associated with the administration of justice and the practice of law in England. This "terdemoulin" is more commonly known as a Mill Rinde or milrine (link of a mill) which is also referred to as a "fer-de-molline" or "fer de molyne d'argente." By whatever name it may be called, it represents the piece of iron which is affixed in the center of the lower of the two grindstones of a mill. Its purpose is to support and balance the upper stone. A Mill Rinde crossing another at right angles forms what is known as the cross moline (molyne) or molne. This is the more frequently portrayed form of the Mill Rinde since a cross in some form or another was the most common of the armorial bearings. Bossewell in his *Workes of Armorie* (1572) writes that the cross moline . . . "is made to simulate the iron in the nether stone of the mill. The which instrument beareth and guideth the upper millstone equally and



192.1

Figure 1-1.—Lincoln's Inn Coat of Arms.

directly in its course, that it decline not over much on the right part, nor on the left part, but ministers to every part equally and without fraud. And this cross might conveniently be assigned and given to Judges, Justices, and to such others, who have jurisdiction of the laws, as a sign, or token for them to bear in their arms. That is to say, as the aforesaid instrument is there placed, to direct the millstone equally, and without guile, so all judges are 'bounden,' and 'tied to conscience,' to give equally to every man, that which is his right."

### The JAG Corps Device

From the beginning the committee felt that some oak symbolism should be included in the device in keeping with the traditional insignia of staff corps in the Navy. Tradition in this respect is very deep-rooted and has a long colorful history. The oak tree from the time of the earliest wooden ships has been associated with the navies of the world as one of the most durable of shipbuilding timbers. The characteristics of the tree with its wide spreading branches and its appearances of sturdiness coupled with the dependability and strength of its timbers has won for it the recognition of being symbolical of might and sturdiness.

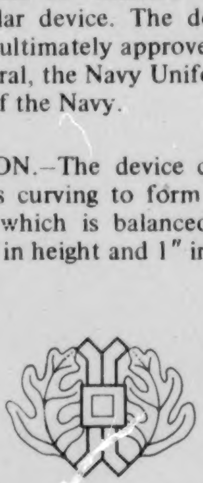
Many of the early ships through their performance have been referred to as having "hearts of oak." With its nautical association as a shipbuilding material of characteristic sturdiness, it was natural that some portion of the oak should be used by seafaring men as a symbol of the strength of character and physique necessary in their profession.

In its early usages, the oak leaf was adopted as being symbolical of the tree itself; the acorns in turn being symbolical of the seed of sturdiness which was imparted by officers or leaders to their crew members. As such, the oak leaf coupled with acorns became a decoration and badge of seafaring people engaged in the hazardous task of protecting their countries and their merchant marine.

The use of the oak leaf in the American Navy dates from about 1830 when this symbol was embroidered in gold to designate rank or corps. From that time until the present date, with the evolution and establishment of the various staff corps in the naval service and the need for distinguishing between these corps, various designs and forms of the oak leaf have been adopted to identify the several corps in the Navy.

The committee finally concluded that the two symbols discussed above (the Mill Rinde and the Oak Leaf) should be "married" into a suitable sleeve and collar device. The device shown in figure 1-2 was ultimately approved by the Judge Advocate General, the Navy Uniform Board, and the Secretary of the Navy.

DESCRIPTION.—The device consists of two gold oak leaves curving to form a semicircle in the center of which is balanced a silver "Mill Rinde" 13/16" in height and 1" in width.



192.2

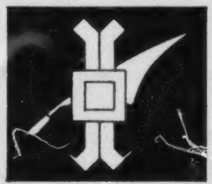
Figure 1-2.—JAG Corps Device.

SYMBOLISM.–The oak leaf, denoting a corps, symbolizes strength, particularly the strength of the hulls of ships of the early American Navy which were oak timbered.

In this device the two counterbalancing oak leaves are identical and connote the scales upon which justice is weighed. Surmounted between these two oak leaves is a "Mill Rinde" sometimes referred to as the link or iron clamp of a mill stone, also referred to as a fer-de-molline, symbolizing that justice must be equitably administered.

## The Legalman Rating Insigne

Historically, rating insignia have been given to Navy enlisted men which depict the occupational field in which they are serving. It follows that the "Mill Rinde" should be an integral part of the Legalman rating badge. It represents that you are a part of the legal profession.



192.3

Figure 1-3.—Legalman Rating Badge Insigne.

The quill represents the clerical functions which Legalmen perform in support of administering the military justice system in the Navy as well as in the other aspects of the rating.

The rating insigne, as shown in figure 1-3, has been approved by the Judge Advocate General, the Navy Uniform Board, and the Secretary of the Navy for wear by Navy Legalmen.

## Chapter 2

# OFFICE PROCEDURES AND SECURITY

In this chapter some pointers on office administration will be discussed. We take a look at such things as office organization, office procedures, preparation and handling of official correspondence, disposal of official records, and end up with a discussion on security of classified information.

### OFFICE ORGANIZATION

Your office organization will depend largely upon the size and scope of your operation. In small commands you may be the only enlisted man assigned to the Judge Advocate (JA) office whereas large law centers and some JA offices are normally staffed with a number of legalmen. Whichever situation you may find yourself in, the important thing is to ensure that your office is organized to accomplish its mission.

Now let's take a look at the office organization of the Judge Advocate General, and then work our way on down through the organization of the law center to that of the small JA office.

### ORGANIZATION OF THE OFFICE OF JAG

The Office of the Judge Advocate General has been aptly compared to a tremendous law firm—a law firm with a generality and magnitude of practice that is quite extensive. And it has but one gargantuan, globally extended client—the United States Navy.

Too often there has been a tendency to consider that the Judge Advocate General is concerned solely with the administration of military justice. It is true that military justice is highly important and has grown increasingly complex since the advent of the Uniform Code of Military Justice. The *Manual for Courts-Martial* is no longer the only source of law for military justice. Constant and continuing reference must be made to the decisions of the U.S. Supreme Court, the U.S. Appellate and District Courts, the United States Court of Military Appeals and opinions of the Boards of Review. The basic source material with which the lawyer practicing law in the military must now be familiar is many, many times greater than it was in previous decades. In a recent typical year, only about 5,000 out of some 60,000 action items received in the OJAG related to military law. The Judge Advocate General is also responsible for legal advice in such fields as international law, admiralty claims, litigation, petroleum law, retirements, investigations, miscellaneous administrative law problems, and legal assistance, to name but a few.

The workload in these fields beyond military justice has expanded steadily and seems certain to continue its increase. This is due in part to a host of new laws, treaties, regulations, and court decisions. It is also the inevitable concomitant of the Navy's present global activities and responsibilities, which are, and promise to remain, on a scale never before envisaged.

In international law, the quality of legal advice available to the commanders of our operating forces is of critical importance in the present world situation. Beyond the scope of international law, Navy legal advice in fields such as admiralty, claims, and litigation may and does result in the savings of millions of dollars to the United States Government.

The organizational framework of the Office of the Judge Advocate General is as simply

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patterned as the complexity of activities permits. The organization chart shown in figure 2-1 details the functional alignment of the organizational units. For the curious, a complete summary of the functions of each unit can be found in NAVPERS 10834-B, *Organization and Functions of the Office of the Judge Advocate General*.

## JUDGE ADVOCATE OFFICE ORGANIZATION AND MANAGEMENT

Most of your duties as a Legalman will be performed in an office. You may be assigned to a small office where you are the man in charge, or to a large law center where you are one of several petty officers and strikers under the supervision of a Chief Legalman.

You have already studied about the importance of office appearance and arrangement, ordering of supplies, maintenance of office equipment, and office procedures and behavior in preparing for advancement to Yeoman Third Class. Our discussion in this chapter, therefore, will be concentrated on some of the more important organizational principles and on office management.

### Office Layout

The physical layout of your office space should conform, as far as possible, to the principles of good layout. If you have two office spaces, consider placing all personnel in one room and your supplies, duplicating machine, and other infrequently used office equipment in the other. This will avoid the temptation to call back and forth from one office to another, and, if you are the man in charge, will make your job of supervision easier. Also special jobs like duplicating can be kept from disturbing or being disturbed by regular office routine.

Office arrangement is an area in which room for improvement frequently exists. Often it is apparent from casual observation that offices are laid out with little regard to the tasks to be performed. Areas may be overcrowded in one office while in the office down the passageway space is being wasted.

Attention must be given to such things as mission, work flow, and utilization of personnel when planning a Navy office. If the office to which you are assigned is not functioning properly, rearrangement may improve production.

STRAIGHT-LINE FLOW OF WORK.- An important principle of office management is the straight-line flow of work. In general this means work progresses from one desk to another through a course as near as possible to a straight line. The desk arrangement is such that it is unnecessary for work to double back over a course it has already traveled. This continuous forward movement of work saves time and manpower, both of which are essential to good office management.

This principle may be compared to an assembly line in a modern factory. In the factory a piece of equipment starts down the assembly line, stops at certain points for various operations, and continues on to completion. This is true of straight-line flow of work. The straight-line principle ensures an effective office, effective utilization of space and manpower, less danger of losing important documents, and ensures completion of work expeditiously.

A straight-line flow of work is achieved by studying the steps to be performed so as to eliminate unnecessary crossing and backtracking and by placing desks and equipment to facilitate the flow of work.

When laying out your office some practical suggestions you should keep in mind are:

- Units and individuals having the most frequent contacts should be located near each other.
- Personnel having heavy in-and-out traffic should be located near entrances.
- Arrangement of equipment and facilities should allow for effective supervision.
- Layout should provide for maintenance of proper security precautions.
- Files, supply cabinets, and records should be conveniently accessible to those who use them.
- Personnel using the same equipment should be grouped together; noisy machines should be grouped to minimize interference with other work.

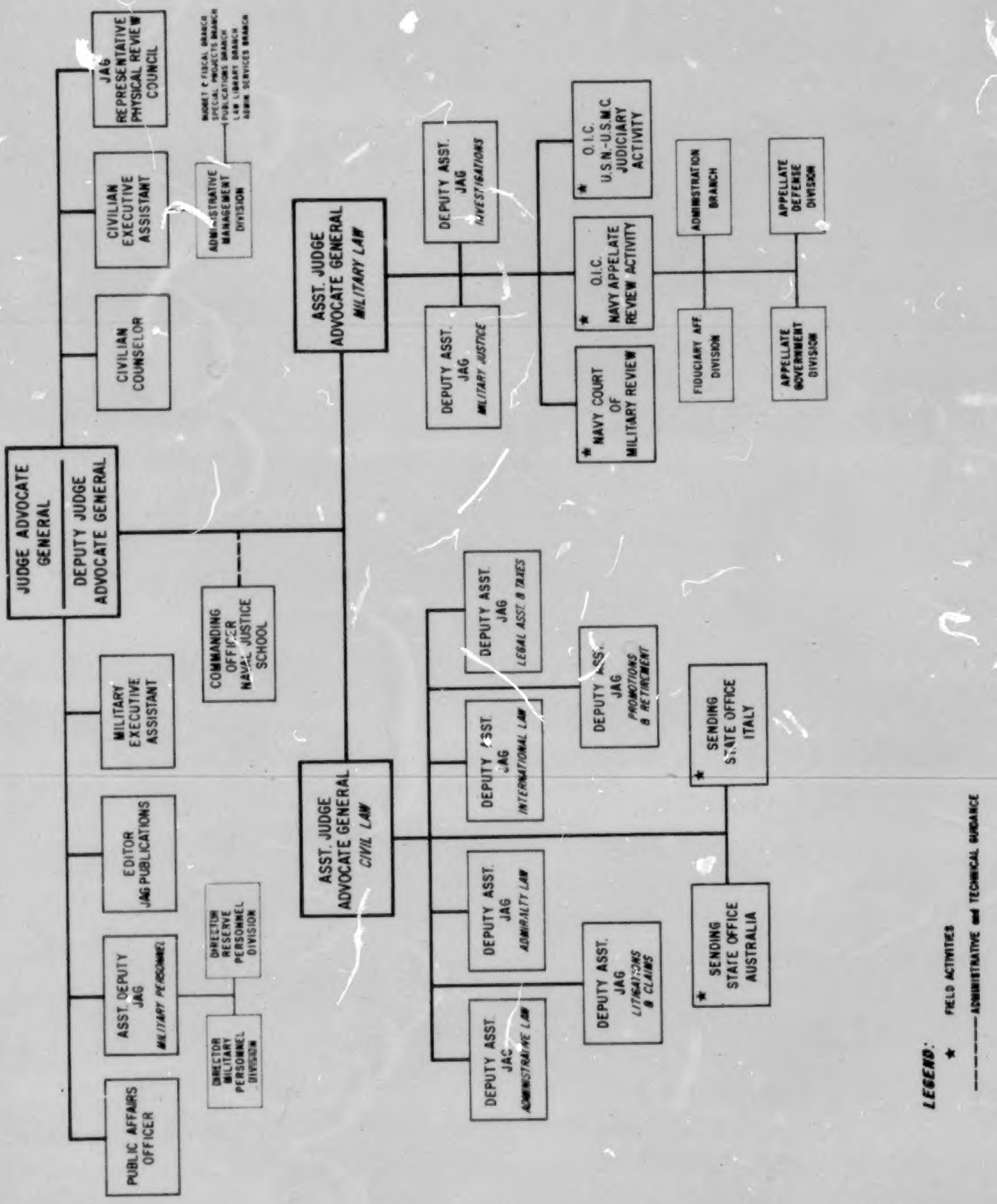
JUDGE ADVOCATE GENERAL
DEPUTY JUDGE ADVOCATE GENERAL
PUBLIC AFFAIRS OFFICER
ASST. DEPUTY JAG MILITARY PERSONNEL
EDITOR JAG PUBLICATIONS
MILITARY EXECUTIVE ASSISTANT
CIVILIAN COUNSELOR
CIVILIAN EXECUTIVE ASSISTANT
JAG REPRESENTATIVE PHYSICAL REVIEW COUNCIL
DIRECTOR MILITARY PERSONNEL DIVISION
DIRECTOR RESERVE PERSONNEL DIVISION
COMMANDING OFFICER NAVAL JUSTICE SCHOOL
ADMINISTRATIVE MANAGEMENT DIVISION
BUDGET & FISCAL BRANCH
SPECIAL PROJECTS BRANCH
PUBLICATIONS BRANCH
LAW LIBRARY BRANCH
ADMIN SERVICES BRANCH
ASST. JUDGE ADVOCATE GENERAL CIVIL LAW
ASST. JUDGE ADVOCATE GENERAL MILITARY LAW
DEPUTY ASST. JAG ADMINISTRATIVE LAW
DEPUTY ASST. JAG ADMIRALTY LAW
DEPUTY ASST. JAG INTERNATIONAL LAW
DEPUTY ASST. JAG LEGAL ASST. & TAXES
DEPUTY ASST. JAG LITIGATIONS & CLAIMS
DEPUTY ASST. JAG PROMOTIONS & RETIREMENT
★ SENDING STATE OFFICE AUSTRALIA
★ SENDING STATE OFFICE ITALY
DEPUTY ASST. JAG MILITARY JUSTICE
DEPUTY ASST. JAG INVESTIGATIONS
★ NAVY COURT OF MILITARY REVIEW
★ O.I.C. NAVY APPELATE REVIEW ACTIVITY
★ O.I.C. U.S.N.-U.S.M.C. JUDICIARY ACTIVITY
FIDUCIARY AFF. DIVISION
ADMINISTRATION BRANCH
APPELLATE GOVERNMENT DIVISION
APPELLATE DEFENSE DIVISION
LEGEND:
★ FIELD ACTIVITIES
– – – – ADMINISTRATIVE and TECHNICAL GUIDANCE

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Figure 2-1.—Office of the Judge Advocate General.

- Adequate heat, light, and ventilation should be provided.
- When placing desks in an office, do not place them facing windows. They should be placed to take best advantage of available light and to prevent glare.

**Personnel Management**

We will necessarily have to look at personnel management through the eyes of the office supervisor or manager. You're not expected to be a management engineer, but knowledge of some of the basic principles of good office management will be helpful as a guide and as a standard against which to measure your own ideas.

EACH DUTY ASSIGNED.–The first principle of organization is that every duty performed in the office has to be assigned to someone. This means the obscure or once-in-a-while jobs as well as those done each day.

You must develop and maintain a firm "chain of command" in your office and ensure that every man understands not only his own position in the chain but that he also understands the importance to efficiency and organization in maintaining the chain.

MEN MUST KNOW JOBS.–Secondly, when a man is assigned a job, he should have a thorough knowledge of all procedures involved, the publications or other directives required and where he can obtain them. He should know the order in which the various steps of the task are completed. Also he must know it is his moral responsibility to accomplish the job in a minimum of time consistent with quality.

MEN MUST KNOW THEIR RESPONSIBILITY.–The third principle, which is closely related to the second, is that a specific responsibility should be assigned to one man only. For larger tasks, two or three men may have to pitch in, but one should be responsible, and subdelegation of responsibility should be squelched the moment it appears. Once you allow subdelegation you will find that some jobs aren't being done. Take as simple a thing as a mail run. If the man assigned to pick up mail each day gets special liberty, he should know that HE is still responsible for having the mail picked up on that day. It is up to you, as the man in charge, to see that he understands this. True, most official mail is routine, but how do you explain to the staff judge advocate (or worse yet, the captain) why a piece of important mail was a day late in being answered?

AUTHORITY WITH RESPONSIBILITY.–A fourth principle is that of matching responsibility with authority. This is often discussed in training manuals and elsewhere. It simply means that every person should be given sufficient authority to accomplish the work for which he is responsible. He should not be permitted, of course, to interfere needlessly with other people's work, but he should be able to require from those under his supervision action necessary to get the job done.

SPAN OF CONTROL.–A fifth principle concerns what is known as the span of control. A man can directly control or supervise only so many men and do it well, depending on the job and his own capabilities. The span usually runs from three to seven men. If you, as First Class, find yourself in charge of an office with nine men in it, and the functions of the office are fairly routine, you probably will have no trouble. On the other hand, you may find yourself bogged down, wasting time and talent on a mass of small details. Then is the time to reduce your span of (direct) control. Always retain your overall authority and supervision, but when necessary break down the span into groups, by task, of four or five men each. Each group should be headed by a petty officer responsible to you for the professional (and sometimes military) performance of the men in his group. This leaves you free to review records of trial, review the routing of incoming mail, keep tabs on and ensure timely submission of reports, and attend to other matters properly charged to the office supervisor. Leave the smaller jobs to your petty officers, and you will have time for the important ones that you have to do.

FAIR DIVISION OF WORK.–The last principle we will discuss is that concerning a fair division of the workload. Don't make the mistake, which is very easy to do, of having your best man do all the work. In the first place, this is penalizing him for being a good man. Secondly, when he leaves, the office will be in a mild form of chaos until someone else is trained. In the third place, since few demands are made on the nonproducers, they may look busy but seldom do anything constructive. See that all hands pull their share of the load. Remember, you have the responsibility of training all your personnel to fulfill their duties according to their rates.

### Law Centers

The law center concept came about as a result of the Military Justice Act of 1968. Worldwide activation of law centers was considered the best means to provide for implementation of the Act. Consequently, the Chief of Naval Operations directed designated commanders to activate law centers on or before 1 August 1969 to provide a variety of legal services to shore and afloat commands in their areas. Presently, there are some 27 law centers established in various areas of the world. OPNAVINST 5800.6 series lists these areas and the responsible commander in each area and sets forth the services to be provided.

### Ship, Station, or Staff Judge Advocate Office

Aboard ship and at some shore installations you may be the only Legalman assigned to the activity. Your office force should, of course, be sufficiently manned to handle the job. You may be assigned a YN3 and a striker or two depending on the size of your activity and the scope of services provided. In determining the manpower requirements for your office, consideration must be given the standards of service guidelines promulgated in existing regulations, particularly as pertain to the Legal Assistance function.

Legal assistance and military justice matters will account for a large part of your work. In addition, you should expect considerable business in the claims and investigative fields.

Using the principles discussed above you should be able to organize your office in such a way that all essential functions are covered, that will take best advantage of the facilities assigned, and that will result in the best utilization of the personnel assigned.

### Legal Assistance Section

The legal assistance section should be organized in such a manner that prompt and efficient service can be provided to members and/or their dependents. Clients should be greeted when they arrive and the nature of their problem ascertained. Usually, the client is asked to complete a simple form indicating his name and other identifying data and the general nature of his problem. From this information you can proceed to assist him with his problem, referring him to the legal assistance officer when necessary.

Chapter 14 deals extensively with your duties in connection with legal assistance.

## OFFICE PROCEDURES

When you begin work in a new billet, one of your first jobs is to learn as much as possible about the organization in which you work. You should learn the purpose for which your office exists, and the duties it performs. Then you should study the office organization and the chain of command.

After you understand the functions of your office (for example, Claims, Military Justice, Legal Assistance, etc.), you will see how your own duties fit into these functions. This knowledge will make your various jobs and responsibilities more interesting to you.

The men who now hold chief's rates got there by looking beyond their own jobs. You should know the name and the rank or rate of every person in your office, and the manner in which every signing official signs his name. You should also learn what part of the office operations each person performs and how his work contributes to the general functions.

Thinking of your office in relation to your ship or station, you should study the ship or station organization, the names, titles, and ranks of those above your office in the chain of command. You should know which other offices are closely related to yours in their duties. To understand the Navy-wide program of which you are a part, study the publications related to your work. Learn which reports are due, and in what form. Remember what you read in Chapter 1 of this text about the various aspects of a Legalman's work. To which of these does your billet belong? How is it related to others?

You have previously studied general office procedures and concomitant behaviors in *Yeoman 3 & 2*. Now we will consider some of the procedures peculiar to JA offices and law centers.

## MAINTENANCE OF FILES

Constant changes in naval office personnel owing to transfers, leave, and discharges create a greater than usual need for a single subject classification system. The present standard Navywide system fulfills that need, in that a man who knows the subject filing system of one ship or station can operate that of another with little decrease in efficiency. This does not mean that each office has the same number or type of files. Instead, it signifies that a standard SYSTEM is utilized to assign subject codes (numbers), that all general files have the same basic arrangement, and that certain sets of files are kept by all activities.

Details of file arrangement within any particular naval office depend upon the mission or function of the office, and the volume of its official correspondence.

In addition, you have studied in *Yeoman 3 & 2*, the standard Navy filing system, and the recommended filing practices. The general types of filing equipment are also covered in that text. Therefore, we will concentrate on the variety of files with which you will be concerned in JA offices and law centers.

### General Files

Your general files in a JA office or law center will be principally similar to those found in any other Navy office. They constitute the bulk of daily routine business files for which no special file need be set up. Such items as incoming letters, copies of outgoing letters, and memoranda are examples of general files.

In a small JA office wherein the volume of claims business is not so great, you could probably file all your claims correspondence in the general file (5890). However, if your office processes a large number of claims, you should file only general correspondence in the file folder in the general files, and set up a special file in alphabetical order (by last name of claimant) for claims processed. In a decentralized filing system, files are normally kept by the section responsible for the function being performed; that is, the Claims Section would keep claims files, the Review Section would keep review files, the Legal Assistance Section would keep legal assistance files, and so forth. You may encounter the decentralized filing system in law centers in which the volume of files would warrant such a system, but in a small JA office in which the volume of business (and hence, the volume of files) is not so great, such a system probably should not be instituted.

Courts-martial records, while a part of your general files, are generally kept in a separate drawer of the filing cabinet. You should file SCMs, SPCMs, and GCMs separately. They may, of course, be filed in the same drawer of the filing cabinet, if necessary, but should be grouped together by the type of court involved, and filed alphabetically according to the last name of the accused.

Whether you implement a centralized or decentralized filing system will, for the most part, be determined by the size of your organization, and the volume of business handled. Whichever system is used, it is important that those persons concerned with the filing of records thoroughly understand the system in use.

### Legal Assistance Files

The material contained in legal assistance case files is limited to private unofficial matters; such material is privileged and, consequently, protected under the attorney-client relationship. Each legal assistance office should, therefore, maintain only such files as are necessary for the proper operation of the office.

Legal assistance offices should also maintain whichever records are necessary for the preparation of required reports. The Legal Assistance Case Record (NAVJAG 5801/9) provides for the recording of the information required for the legal assistance annual report. The use of this form to record each individual legal assistance case is recommended. Further information on legal assistance files and reports is contained in chapter 14.

## REPORTS CONTROL

The reports control system is used by all ships and stations in the Navy, to control from one central office all reports which are required of a command in the execution of its mission. The responsibility for management of reports regarding a ship or station is assigned as a collateral duty to an officer, who is then known as the REPORTS MANAGEMENT OFFICER. As such, he defines the policies and controls to be observed by all personnel in connection with the reports management system, or tickler system.

### Control Point

The captain's office aboard ship, or the administrative office at a shore station is normally designated as the single control point, and is responsible for the control of all reports which are required from that command. Although the tickler system is controlled from this office, it should be noted that reports are prepared by each departmental office, and submitted to the control point for further processing and subsequent mailing. The primary function of the control point regarding the tickler system is to maintain a record of all the reports required and to remind departments in advance of a report's due date, so that the report may be submitted on time. As the man responsible for reports control in your office, you must maintain coordination of all activities, and contact with your counterpart at the central control point for reports prepared by your office.

### Tickler System

"Tickler System" is the term commonly used by the Navy for the Reports Control System. It furnishes an accurate index to the stipulated reports, and when they must be submitted. The format of a reports tickler file may vary slightly from office-to-office. However, the file should be uniform in structure by using NAVEXOS 4179 (the standard 5" x 8" card), and should contain separators or indicator tabs marked as follows:

DAILY
WEEKLY
MONTHLY
QUARTERLY
SEMI-ANNUALLY
ANNUALLY
WHEN OCCURRING (SITUATIONAL)

January through December, 1 through 31 (for use with current month)

Although it may not be necessary to use all the above tabs or separators (depending on the make-up of your file), those separators are customarily placed in a standard size box (or the tickler box). The Recurring Reports Record Cards (NAVEXOS 4179) are filed between the appropriate separators to reflect the tickler date on which the report should be prepared.

The report tickler file requires daily attention if it is to be an effective aid, and personnel must be kept informed of current requirements for reports.

In addition to recurring reports, the reports tickler file may be used:

- As a reminder of action required on incoming mail, such as a reply which may be required on an incoming letter.
- As a reminder of non-receipt of a reply to an outgoing letter from your command.

Tickler cards may be prepared to serve the purposes of either of the above, but an easier and more economical method would be to file a copy of the routing slip on incoming mail, and a copy of the correspondence itself in the case of outgoing mail, in the appropriate place in the tickler box to serve as a reminder of action required.

In a small JA office, most likely you will be preparing all the reports yourself. However, in a law center, reports are normally prepared by the section responsible for the subject matter comprising the report; some reports will have to be coordinated between several sections. Your job in Reports Control is to ensure that the person responsible for preparing the report is reminded a sufficient period in advance of the due date, so that the report will be submitted on time. One recommended method to accomplish this is to furnish the person responsible for preparing the report a copy of the tickler from your tickler box.

**Reports Case Folder File**

The Reports Case Folder File is a file maintained by the originator of the reports, or by the person who controls reports for the office. It should contain a folder for each authorized or required report. Each of these case folders should contain basic information about the report, i.e., the directive authorizing the report, instructions for its preparation and submission, a specimen copy of the report itself, and any correspondence or other matter relating to it.

## PREPARATION OF OFFICIAL CORRESPONDENCE

A senior Legalman needs skill in correspondence. There are numerous billets to which you may be assigned, as a Legalman First or a Chief Legalman, where you will be expected to compose letters from the briefest of notes or even from oral instructions. In the case of long letters, you are expected to develop the ability to prepare a first draft which will require no more than minor amendments by the reviewing officer before it is ready for smooth typing. Short, routine letters should be mastered to the point where they rarely need any change before signature. These are qualifications for Legalman First. In qualifying for Chief, you are expected to increase your skill in letter drafting.

By now you should be well acquainted with the format of the naval letter and that of the business form letter, having previously studied them in *YN 3 & 2*. You should also know the paragraph content of Navy directives and the other rules that apply to this particular kind of official letter. Punctuation, spelling, and abbreviation are subjects you have also studied in preparing for YN Third. You also should know enough about grammar and good English usage to avoid the most obvious types of errors.

This chapter is designed to carry on from where your study for Yeoman Third ended. It will give you some of the basic rules of good style in preparing the body of a letter, help you to avoid some common pitfalls in the use of language, and provide practical suggestions for improving your own writing style.

### PLANNING THE LETTER

You will produce a more effective letter if you give some time to planning before you begin to write. A plan of some kind is necessary to ensure that you have included everything you intended and that you have set things down in a clear and orderly arrangement. Whether you outline the letter completely, make brief notes, or carry your plan in mind will depend upon the length of the letter and your own methods of working. Thought should be given to the classification of your letter at this point.

**Purpose of the Letter**

Planning cannot begin without a clear knowledge of purpose, so your first step is to be sure you understand exactly what the letter is intended to accomplish. Preparing a statement of the subject of the letter will help in clarifying the purpose and will give you guide lines about what must be included and what should be omitted.

It is possible for a letter to deal with more than one subject, but usually this is not advisable unless the subjects are very closely related. A reply on one subject may be prepared in hours, whereas days or weeks may elapse before an appropriate answer can be made on another subject. If both questions are asked in the same original letter, confusion is likely to result. Furthermore, one department of the recipient command may prepare the reply on one subject and a different department on another. So, even though you have to write several letters to the same command on the same day, it is better to do so than to combine unrelated matters. The types of letters that are generally used are as follows:

- Request for permission or authorization to act.
- Request that action be taken.
- Request for information.
- Letter supplying information or instructions not requested.

- Reply to a request for permission or authorization to act.
- Reply to a request that action be taken.
- Reply to a request for information.

While not every letter you draft will fall into one of these categories, the categories will serve as examples of how to analyze and plan a letter. For instance, when the purpose is to request something, you must be certain that the request is definitely and clearly stated. Usually there should also be a statement as to why the request is being made and any additional explanation or suggestions that are required or appropriate. When a letter is written in reply to one received, the receipt is sometimes acknowledged, not only by citing the letter as a reference but in the body of the reply. If a request has been made, the most important thing in the reply is a clear statement as to whether the request is granted or denied. Further explanation, limitations, or suggestions should be included as appropriate. Long letters frequently need a summarizing statement as the final paragraph.

### Organizing the Letter

The order in which the various parts of the letter are arranged should be planned with the reader in mind. A letter of request, for instance, may begin with the request itself, followed by an explanation of why the request is made. Sometimes, however, it may be clearer to the reader if the letter begins with a discussion of the situation and leads up to the request. A letter of reply frequently begins by acknowledging the letter received. The important thing is for you to: (1) see the body of the letter as a succession of units; (2) arrange these units in what seems the most satisfactory order; (3) complete each unit before moving on to the next; and (4) maintain continuity by providing transition from one unit to another.

In letters of average length, each important unit may be one paragraph, although there is no rule about this. For example, an explanation of reasons why something should be done may take more than one paragraph. Some letters, on the other hand, may be so simple that one paragraph is enough for the entire body. Just as each letter has a subject, so each paragraph covers a topic or subtopic. Each paragraph has its own order structure, so that one idea leads naturally to another and one paragraph leads to another.

## CHOICE OF WORDS

Most people would agree that good letter writing should be clear, concise, direct, dignified, courteous, and suited to its purpose. The problem is how to achieve these qualities. You have already made some progress toward clarity when you produced an orderly plan for your letter. The rest will depend on the language you choose for carrying out your plan.

The simplest unit of language is, of course, the individual word. Combined in meaningful groups, words become sentences, which in turn are placed in orderly sequence to become paragraphs. Each of these units requires attention if you are to achieve really good style.

Choosing the right words is a long step toward good style. The best words are those that are precise in meaning, suited to the intended reader, and as short, simple, and direct as possible.

### Exactness of Meaning

Words can miss the mark of exactness in several ways. One of the most obvious is choice of the wrong one from two that sound or look alike. How often have you read, "He was appraised of the situation . . ."? It probably would have been better in the first place simply to have said, "He was told of the situation . . .," but in any event, the writer should have known that to tell is to APPRISE, and to APPRAISE means to evaluate.

Can you always choose rightly between the following: advice, advise; affect, effect; eminent, imminent; counsel, council, consul; adapt, adopt; principal, principle? You may think of some of these as spelling problems, but they also involve knowledge of meanings. If you have trouble with any of them, you should consult the dictionary. As you become better acquainted with meanings you will find ways of remembering them, like the following for principal and principle:

PRINCIPAL means MAIN or the MAIN ONE

- The principal of the school
- Payment of principal and interest
- Principal and alternate appointments to the Naval Academy
- The principals in the play cast have the main roles
- His principal objections to the plan are

PRINCIPLE means RULE or theory

- He lives according to his principles
- The principles of democracy
- He understands it in principle

In other words, whenever you can substitute "mAin," you spell it "principAL." If you can substitute "ruLE," you spell it "principLE." This kind of device for remembering is sometimes of help, but beware of establishing a system too hastily, for it may steer you wrong.

Among words that are related or similar in meaning, the discriminating writer usually will find that one suits his purpose better than another. Take OBTAIN, PROCURE, and SECURE, for example. OBTAIN is the more general term. PROCURE has, in the Navy, a specific connotation of obtaining materiel through official channels and by approved supply procedures, usually for someone else, as "The supply officer procured the boiler parts." SECURE is often wrongly used instead of OBTAIN or PROCURE. Its specialized Navy use, meaning to fasten something down or make it firm, is the correct clue to its general meaning. When you say "He secured it," meaning he obtained it, you are implying that he got it against competition and then held on to it firmly or pinned it down in some fashion. If that isn't what you mean, better use OBTAINED.

Although you might say that a Navy man's BILLET is his JOB, you cannot correctly use the word BILLET in every instance where you would use JOB. While FEWER and LESS seem much alike in meaning, FEWER describes number, and LESS describes quantity: "fewer AWOL cases"; "a ship drawing less water." NOTORIETY is a synonym for FAME, but it usually connotes an unpleasant kind of fame. Someone has said: "Fame is a rose; notoriety an onion."

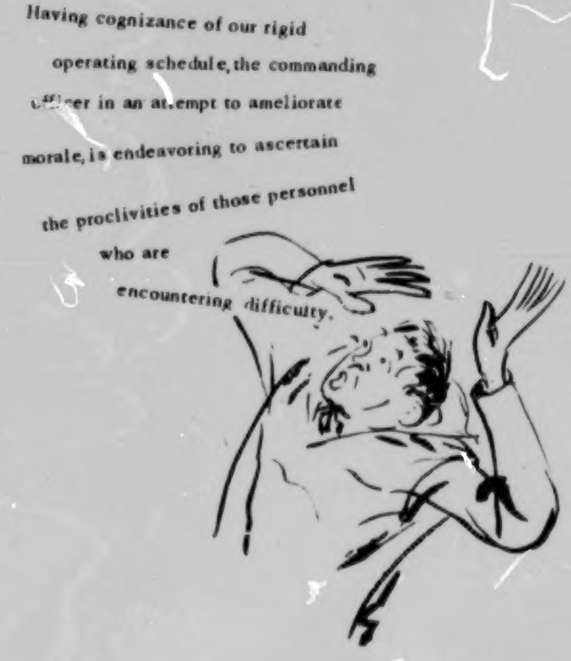
**Suitability to Reader**

In choosing words, always keep in mind the person for whom the letter is intended. For example, when preparing a letter to a command senior to yours, "Your attention is invited" is used rather than "Attention is directed"; and "it will be appreciated if . . . can be maintained" is used instead of "shall be maintained."

A directive addressed to all hands is written in language all can understand. This does not necessarily mean that only one-syllable words are used, but it does mean that the words chosen are meaningful to all hands. How would YOU like to read a notice that began like this?

"Having cognizance of our rigid operating schedule, the commanding officer, in an attempt to ameliorate morale, is endeavoring to ascertain the proclivities of those personnel who are encountering difficulty . . ."

Ridiculous? Certainly, but not too much worse than some directives that have been published.


Having cognizance of our rigid
operating schedule, the commanding
officer in an attempt to ameliorate
morale, is endeavoring to ascertain
the proclivities of those personnel
who are
encountering difficulty.

21.1

Figure 2-2.—Would you mind repeating that—in my language?

**Avoid High-Sounding Language**

Avoid using a long word merely for the sake of sounding more important or more dignified. Such an attempt usually results only in sounding pretentious, stuffy, and hard to understand. Compare the following, for example:

> It is necessary for the officer assigned as head of the department to devote considerable time to the indoctrination of an assistant in the proper estimation of the needs of the department in the way of supplies.
>
> A department head should take time to teach an assistant how to estimate the quantities and kinds of supplies needed.

The two sentences mean essentially the same thing, but the first has its meaning wrapped up in excess words and unnecessarily long ones. The second, in shorter and simpler language, is not only easier to understand and more direct, it is also more interesting.

Column 1 below lists some words and phrases greatly overused and generally to be avoided. Column 2 suggests substitutes that are shorter and, in most cases, more effective.

| | |
|---|---|
| accompanied by | with |
| accomplished | done, did |
| afford an opportunity | allow |
| approximately | about |
| due to the fact that | because |
| effectuate | bring about |
| endeavor to ascertain | try to find out |
| equivalent | equal |
| in compliance with the request | as requested |
| inadvertance | error |
| inasmuch as | since |
| modification | change |
| notwithstanding the fact that | although (even though) |
| optimum | best |
| over the signature of | signed by |
| peruse | read |
| participate | take part |
| predecease | die before |
| is predicated on the assumption | assumes |
| in process of preparation | being prepared |
| subsequent to | after |
| terminated | ended |
| transpired | happened |
| utilization | use |

While short, simple words are generally best, not everything can be said in words of one syllable. Sometimes the exactly right word to express what you mean may be a long word. In that case it would be a mistake to substitute a less accurate term just for the sake of using a shorter word. For instance, even if you could think of shorter words to replace the term "electronic data processing," it is doubtful that they would convey the same meaning.

Using technical language always requires consideration of the reader. If he himself is a specialist in the technical field under discussion, technical terms may be used freely, but for anyone else, the terms should be carefully chosen, and some may need to be defined. This is true even for well educated readers, since no one can be familiar with all kinds of technical language. For instance, a lawyer would probably use the term INTER ALIA to another person in the legal profession, but to the client or the family he might say AMONG OTHER THINGS.

The fault in some writing is not only that long words have been used where short ones would do, but also that more words are used than necessary. Compare the two sentences below:

> General education makes additions to your knowledge, makes you able to get the answers to your problems more easily, gives you a better chance for success, gives greater force to your ideas, and makes you more on your toes.
>
> General education adds to your knowledge, helps you solve your problems, increases your chances for success, and makes you more forceful and alert.

In the second version, slightly longer words are sometimes substituted for awkward lengthy combinations of short words–"increases" instead of "gives you a better"; "alert" for "on your toes."

Here is another example to show you how to tighten up wording, eliminate undesirable repetition, and effect greater precision in meaning.

> Certain ships are designed or designated for the transport and care of large numbers of casualties as an incidental mission of those ships. They are not hospital ships but are classed as hospital transports; they are ships used for evacuation of the sick and wounded to areas where full hospitalization is available.
>
> Supplementing hospital ships are hospital transports. These have an incidental mission to evacuate large numbers of sick and wounded, giving them minimal care until they reach an area where full hospitalization is available.

The first paragraph contains 53 words, while the second has only 33. In streamlining, however, minor changes and additions have been made. Be careful about this, if you are revising another person's writing, for in striving to make the language more precise you may cause the passage to mean something the writer did not intend.

## SENTENCE STRUCTURE

To be effective, sentences should, of course, be grammatically correct. Also, the various types of sentences should be well chosen and effectively combined, with an eye to clarity, emphasis, and interest.

### Common Faults of Sentence Structure

The faults we will discuss in this section, although fairly obvious, are common enough that it will be worth your while to review them.

SENTENCE FRAGMENTS.–A frequent fault in grammar among inexperienced writers is the INCOMPLETE SENTENCE. By this is meant a sentence that does not contain the two necessary parts, a subject and a predicate or verb. It is possible, of course, for the subject to be understood rather than stated, but you should be sure in that case that it is clearly implied. Here are some examples of incomplete sentences:

> The sightseeing tour, which was arranged for the liberty party.

(There is no main verb. The relative clause has a verb, "was arranged," but what appears to have been intended as a statement with "sightseeing tour" as subject has not been completed.)

> A tall, thin man with owlish spectacles and a bald head.

(The verb is omitted.)

> Ran into the road.

(Here the subject is omitted. Who ran?)

> Just as the searchlight swept across the harbor.

(This tells when something happened, but the whole main statement is missing.)

> Bailey, the new striker, looking as if he would burst with pride.

(There are modifiers here for the subject "Bailey," but no main statement about him.)

Often an incomplete sentence results from failure to recognize that a modifying phrase or clause is really part of the preceding sentence. For instance, use a comma instead of the first period in each of the examples below. The result in each case is one complete sentence instead of a sentence followed by a fragment.

> The ship was making good headway. Steaming through the Caribbean.
>
> A light flashed through the storm. The beam from the Fire Island Lighthouse.

Don't be misled by the fact that some literary men of high reputation deliberately turn out incomplete sentences at times. That is like what the late Emily Post once said about the rules of etiquette: "Well bred persons sometimes break some of the rules, but to break them and get away with it, you first have to know them."

It is true that fractured sentences may occasionally produce the exact effect you want, but be sure you know why you are using them and that they are suitable to what you are writing. For example, fragments like the following may have a place in some kinds of writing: "Bigger and better airplanes!" "Half an hour late?" "No leave for anyone." In official correspondence, however, this kind of structure should rarely be used.

Beginning a sentence with "but" or another connective is regarded by many as incorrect, largely because the connective standing first seems to indicate a fragment. This is one rule that may OCCASIONALLY be ignored if by doing so you achieve a more effective statement. But do not do it often, or you will lose the effect.

RUN-ON SENTENCES.–Another common error in sentence structure is the punctuation of two or more sentences as if they were one. Usually this occurs with sentences that are closely related in thought. For instance:

RUN-ON–We wanted to go swimming, the beach was excellent.
CORRECT–We wanted to go swimming. The beach was excellent.

RUN-ON–Shipping won't be much of a problem, receiving is something else again, you will have plenty of that.

CORRECT–Shipping won't be much of a problem. Receiving is something else again. You will have plenty of that.

Often a run-on sentence is the result not only of faulty punctuation but also of failure to think the construction through and recognize the relationships of the various ideas.

RUN-ON–In the Navy a man relies on his shipmates, they stand by him and help him out of his difficulties.
BETTER RELATIONSHIP–In the Navy, a man relies on his shipmates to stand by him and help him out of his difficulties.

RUN-ON–Detailed decontamination is a lengthy process, it is usually carried on at a home base or rear area.
BETTER RELATIONSHIP–Detailed decontamination is a lengthy process, usually carried on at a home base or rear area.

RUN-ON–An emergency tourniquet can be made from something like a neckerchief, it is wrapped once around the limb and tied in an overhand knot.
BETTER RELATIONSHIP–To apply an emergency tourniquet made from something like a neckerchief, wrap the material once around the limb and tie an overhand knot.

When two main clauses are very closely related, they may be written as one sentence either with a coordinating conjunction (e.g., "and," "but") or with a semicolon. Some of the above examples might have been acceptable with a semicolon instead of a comma.

DANGLING MODIFIERS.–Misplacement of a modifier can confuse the meaning of a sentence, often with ludicrous results. Modifiers should be positioned close to the words they modify, because otherwise, they may seem to modify something else. Haste, carelessness, or lack of understanding of grammar may cause a writer to use a construction without thinking exactly what it is supposed to modify. This kind of error is fairly common in using participles and other adjectives or with adverbial modifiers, as in the examples below.

DANGLING PARTICIPLE–Returning to the ship, the package was found to be on his bunk.
CORRECT–Returning to the ship, he found the package on his bunk. (It was he that returned to the ship, not the package.)

DANGLING PARTICIPLE–Entering the $CO_2$ flooded compartment, the gas overcame him.
CORRECT–Entering the $CO_2$ flooded compartment, he was overcome by the gas.

DANGLING PARTICIPLE–Running rapidly out from the windlass, he caught his foot in the anchor chain.
CORRECT–He caught his foot in the anchor chain as it ran rapidly out from the windlass.

MISPLACED PREPOSITIONAL PHRASE–At the age of two his father died.
CORRECT–He was two years old when his father died.

MISPLACED PREPOSITIONAL PHRASE–For Sale: practically new sports car, by man transferred to Antarctic, with white sidewall tires.
CORRECT–For Sale: practically new sports car with white sidewall tires. Owner transferred.

MISPLACED PREPOSITIONAL PHRASE–Baker saw the driver of the car that had hit him in the theater.
CORRECT–In the theater, Baker saw the driver of the car that had hit him.

MISPLACED RELATIVE CLAUSE–The Chief Commissaryman discovered that old baking powder had been used in the biscuits, which caused all the trouble.
CORRECT–The Chief Commissaryman discovered that the trouble with the biscuits was the use of old baking powder.

A frequently misplaced word is "only." Here is an example to show how, by moving this one word around in a sentence, you can change the meaning entirely:

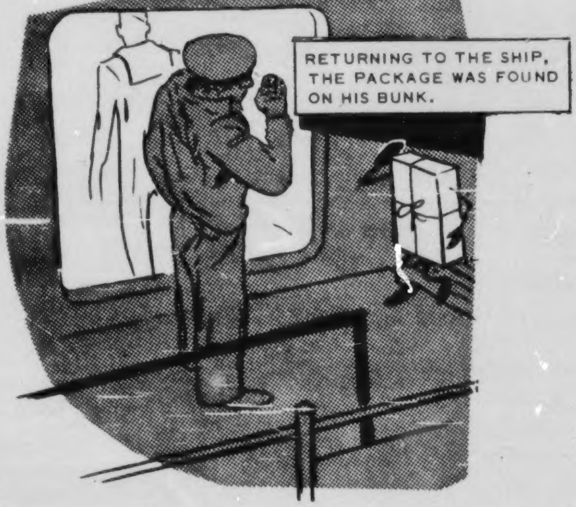
Only he could read the strange dialect. (Nobody else could.)

He could only read the strange dialect. (He could not write or speak it.)

He could read only the strange dialect. (He could read nothing else.)

He could read the only strange dialect. (Only one dialect was strange, and he could read it.)

MISPLACED CORRELATIVE CONJUNCTIONS.–Correlative conjunctions (such as NOT ONLY–BUT ALSO and EITHER–OR) are often misplaced. Their correct position is just ahead of the words or groups of words they connect.


RETURNING TO THE SHIP, THE PACKAGE WAS FOUND ON HIS BUNK.

21.2

**Figure 2-3.–Was it man or package that returned aboard?**

MISPLACED–The Navy letter form NOT ONLY omits the salutation BUT ALSO the complimentary close. (The words connected are "salutation" and "complimentary close".)
CORRECT–The Navy letter form omits NOT ONLY the salutation BUT ALSO the complimentary close.

MISPLACED–EITHER secure lines to the arresting hook OR the hoisting sling. (As this sentence stands, the words that should be connected are "arresting hook" and "hoisting sling." The sentence will be better, however, if two complete prepositional phrases are used instead.)
CORRECT–Secure lines EITHER to the arresting hook OR to the hoisting sling.

Other frequently used correlative conjunctions are "both . . . and," "neither . . . nor," and "whether . . . or."

SPLIT INFINITIVES.–Splitting an infinitive means placing one or more modifiers between the "to" and the verb form. You will hear people say that a split infinitive is no longer regarded as incorrect, but that is only a partial truth. Some writers consider that splitting an infinitive is desirable at times for the sake of emphasis: for example, "To DELIBERATELY disobey an order is a serious offense." Even this sentence will grate on some ears, and generally, it is better to keep the adverb outside of the infinitive construction. This is especially true when you have more than one adverb or a phrase.

AWKWARD SPLIT–The only way to win against a fire is to REGULARLY and THOROUGHLY practice the rules of fire prevention.

BETTER–The only way to win against a fire is to practice rules of fire prevention REGULARLY and THOROUGHLY.

Some may raise an objection to placing modifiers at the end of a sentence, as in the corrected example above, but there is really nothing wrong with using this type of sentence occasionally, so long as the meaning is clear. For further discussion of this point, see loose and periodic sentences later in this chapter.

ERRORS IN AGREEMENT.–You probably have no trouble, most of the time, with agreement of verb and subject. You are not tempted to write: "The propellers was damaged." But how about "The propeller and shaft was damaged"? Wrong, of course, but easy to slip into when you are thinking of the two parts of a compound subject as belonging together. It should, of course, read "The propeller and shaft WERE damaged."

In a compound subject with "or" or "nor" as a connective, the verb should agree in number with the LAST noun in the subject.

WRONG–Neither the propellers nor the rudder ARE damaged.

CORRECT–Neither the propellers nor the rudder IS damaged.

When a parenthetical expression beginning with words such as "together with," "with," or "including" comes between the subject and the verb, there is a temptation to make the verb plural as if the subject were compound. For example:

WRONG–One mast, together with a spar running athwartship, ARE used for flags.

CORRECT–One mast, together with a spar running athwartship, IS used for flags.

Disagreement of subject and verb sometimes occurs because, in a complicated sentence, a nearby noun is mistaken for the subject. This is the case in the sentence below, in which the plural nouns "officers" and "commands" seem to have confused the writer. The subject of the sentence, however, is "duty."

INCORRECT–The primary duty of such staff dental officers serving in these commands are very similar to those of a district dental officer.

CORRECT–The primary duty of such staff dental officers serving in these commands is very similar to that of a district dental officer.

– OR –

The primary duties of such staff dental officers serving in these commands are very similar to those of a district dental officer.

GERUND TAKES THE POSSESSIVE.–A GERUND is a verbal (verb form) used like a noun. It retains some of its verb qualities, however, such as taking a subject or object, or being modified by adverbs. Only one of these–the subject–differs from what would be used with the same verb if complete. The subject of a gerund is in the possessive case instead of the nominative.

WRONG–Had you heard about *him passing the test*?

RIGHT–Had you heard about *his passing the test*?

"Passing" is a gerund with "his" as the subject and "test" as the object. The complete phrase is used here as the object of the preposition "about."

ERRORS IN NOUN CLAUSES.–The pronoun that introduces a noun clause is sometimes given the wrong case because of failure to recognize the structure of the sentence. The case of any pronoun is determined by its use in the clause of which it is a part.

WRONG–The award will go to WHOMEVER submits the best entry.
RIGHT–The award will go to WHOEVER submits the best entry.

"Whoever submits the best entry" is a noun clause. The whole clause is used as the object of the preposition "to." "Whoever" is the subject of the clause and therefore nominative.

Another common error results from failure to recognize that the construction "the reason is" should be followed by a noun clause introduced by "that."

WRONG–The reason he was placed on report was BECAUSE he was absent over leave.
RIGHT–The reason he was placed on report was THAT he was absent over leave.

– OR –

He was placed on report BECAUSE he was absent over leave.

**Effective Use of Sentences**

Sentences may be grammatically correct and still not be as effective as possible, in which case we describe the fault as one of style. Style in writing, like style in dress, is a personal thing–a matter of taste and of knowing how to combine. A writer's style may be clear or confusing, concise or wordy, lively or dull. It may be flippant or dignified, or any of several gradations between.

No one can tell you exactly how to achieve a suitable and pleasing style, but there are some general rules which, if understood and applied judiciously, will get you started in the right direction.

As in the case of vocabulary, style should, first of all, suit its purpose. A style that might be quite suitable for a human interest story in the station newspaper might be inappropriate for an official letter.

Another rule, also mentioned in connection with choice of words, is that simplicity is usually best. One of the classic examples of simplicity, Lincoln's Gettysburg Address, can be clearly understood by children in the lower elementary grades yet retains its appeal to the most sophisticated ear.

SENTENCE LENGTH.–Sentence length affects style in several ways. Generally, short sentences are simpler and easier to understand than long ones. Usually, short sentences are brighter; long sentences more dignified and, unless the writer is careful, more inclined to dullness. The average length of sentences in any piece of writing should be adjusted to the subject matter, the reader, and the writer's purpose.

Interest and emphasis can often be improved by variation in sentence length. For instance, in a paragraph in which most sentences are of average or more than average length, an occasional short sentence may serve to stress an important point or to break the pace agreeably.

Sentences that are too short are inclined to produce a choppy effect, the sound of which is not particularly pleasing. Sometimes these sentences should be combined into a longer one that will not only sound better but will also be more meaningful because the relation of the several statements to each other has been clarified. Here's an example.

CHOPPY–First the men throw off the gun covers. They do this as soon as they reach their stations. Then they break out ammunition or prepare the equipment for action. They prepare only the equipment to which they are assigned.
IMPROVED–As fast as the men reach their stations they throw off gun covers and break out ammunition, or prepare for action the equipment to which they are assigned.

LOOSE AND PERIODIC SENTENCES.–A PERIODIC sentence is one in which you can not place a period before the last word without cutting off a vital part of the sentence. In other words, the sentence usually ends with the verb or with some other vital word rather than a word, phrase, or clause, that merely adds information. (An inverted sentence could even end with the subject.) A restrictive modifier—one that is necessary to complete the meaning of what has gone before—may stand last, occasionally, in a periodic sentence, but not a nonrestrictive modifier. If the sentence ends with a nonrestrictive word, phrase, or clause, the sentence is called LOOSE.

PERIODIC—Whenever small arms and ammunition not required to be demilitarized under this instruction are offered for public sale, the selling activity will comply with the applicable local laws.

LOOSE—Selling activities will comply with applicable local laws whenever small arms and ammunition not required to be demilitarized under this instruction are offered for public sale.

(In the above example, a periodic sentence has been changed into a loose sentence. Note that in the transformation the emphasis has shifted enough to change the meaning somewhat. The sentence now implies that selling activities need not comply with local laws except under these circumstances.)

PERIODIC—Because of a change in status of this activity, these functions have been reassigned.

Personnel to operate these programs, other than the assigned leaders, may be recruited.

LOOSE—Frequently the morale officer arranges for an entertainment committee, or several small committees, to assist with this program.

Where distance is a factor, the placing of equipment in smaller lockers near where it is used will encourage its use by decreasing the effort required of the user.

Periodic sentences are more deliberately constructed and therefore more formal than loose sentences. The latter are more characteristic of informal conversation. Neither one can be said to be right or wrong. Whether you use one or the other will depend partly on which is more effective in getting across the meaning of the particular sentence. In an official letter or directive, periodic sentences probably should predominate, but there is no need to try to make every sentence periodic. Some loose sentences are desirable to keep the style from sounding stilted.

PARALLEL STRUCTURE.—Parallel structure, correctly used, can make a sentence both clearer and more emphatic. In such a structure the sentence has at least two parts that are grammatically alike, with the parts that correspond in meaning corresponding grammatically also.

> Our responsibilities sober us; our adversities strengthen us.

Note that in the example above, both subjects are nouns denoting abstract ideas; each subject is modified by the possessive pronoun "our"; the verb "sober" is balanced by the verb "strengthen"; and each takes the object "us."

Parallel structures may be simple or complex. Below is a somewhat more complicated example.

> For friendly nations to read about our land forces and our air forces is not the same as for them to see our ships and carrier-based aircraft in and over their harbors.

In this one "to read about" is balanced against "to see" and "our land forces and our air forces" against "our ships and carrier-based aircraft."

For a really complicated parallel structure, read the *Declaration of Independence*. Almost the entire document is a series of parallelisms enumerating tyrannical acts of the King of England. To quote in part:

> "He has refused his Assent to Laws, the most wholesome . . .
>
> "He has forbidden his Governors to pass Laws of immediate . . .
>
> "He has refused to pass other Laws for the accommodation . . .
>
> "He has called together legislative bodies at places unusual . . .
>
> "He has dissolved the Representative Houses repeatedly . . ."

This example illustrates that when a parallel structure is long and complicated, it is more difficult, and sometimes impossible, to maintain all aspects balanced as completely as in a simpler structure. In fact, a complete balance of all grammatical parts is not absolutely necessary and may even be hampering or become ridiculous. In the lines cited, the parallelism extends to the subject and verb of the main clause, the latter always in the same case and always followed by an object. The modifiers differ in length and structure, but this does not weaken the effect.

In using parallelism it is important that major grammatical elements placed in parallel positions should be really parallel in structure.

FAULTY PARALLEL–The storage spaces were secure, clean, and everything was stowed properly.

IMPROVED PARALLEL–The storage spaces were secure, clean, and orderly.

FAULTY PARALLEL–The medical officer ordered him to sick bay to both give him needed care and because his disease might be contagious.

IMPROVED PARALLEL–The medical officer ordered him to sick bay both to give him needed care and to protect others from possible contagion.

Incidentally, in using correlative conjunctions correctly, as discussed earlier in this chapter, a writer must also construct parallels properly, and vice versa.

Notice, also, that the second faulty parallel construction contains a split infinitive, which is corrected when the parallel is improved.

POSITION FOR EMPHASIS.–Sometimes emphasis can best be obtained by climax, that is by arranging parallel structures in a series of increasing importance. Again the Declaration provides an example:

> "Our Lives, our Fortunes, and our Sacred Honor."

(One might argue that fortunes are not more important than lives. The arrangement of those two elements is probably accounted for by another aspect of climax–the fact that successive elements often increase in length as well as importance. The construction definitely sounds better as written than it would if "fortunes" were placed first.)

A paragraph may be organized in the same way with the most important sentence at the end. This device, like most others, loses its effectiveness, however, if overused.

## PARAGRAPH ORGANIZATION

A well written paragraph has UNITY, which means that the ideas it contains are closely related and are arranged to develop a single topic or subtopic of the general subject. In modern official letter writing, the tendency is toward short paragraphs, for the sake of readability. This requires not only that all unnecessary verbiage be pared away but also that the subject matter be very carefully organized and subdivided.

### The Topic Sentence

A fairly long paragraph is frequently made more effective if introduced by a TOPIC SENTENCE. Such a sentence makes a general statement that is developed in greater detail in the remainder of the paragraph. Below is an example adapted from a Navy publication.

> Military officers as a class deal in the arena of international law and international relations more than any governmental group with the exception of State Department personnel. Our commanders on foreign soil do so daily. The Commander in Korea is operating under an international organization, the United Nations, carrying out or enforcing an armistice or truce. If he is unfamiliar with its provisions, its implications, and its legal significance in the international community, he will be hard pressed to fulfill the responsibilities placed upon his shoulders. The commander in Berlin must know the terms of the agreement under which he is garrisoned in Berlin, where the North Atlantic Treaty Organization fits into the scheme of things,

> how far he can go to stay within the agreement, how far he may permit the East Germans to go before they violate the terms of the agreement, and the legal implications of each of these situations. The commander at Guantanamo Bay, Cuba, must know the terms of the two treaties and the lease agreement between the U.S. and Cuba which govern our rights to the Naval Base at Guantanamo in order not to give Castro any basis for abrogating these agreements. The commanding officer of any naval activity stationed in a foreign country must be familiar with the agreements under which he is operating; e.g., base rights and Status of Forces Agreements. These are all matters of international law and international relations. It is imperative that the commander understand his position in the international scheme.

A topic sentence need not stand at the beginning of a paragraph; in fact, it is possible to have a well written paragraph with a topic sentence in the middle or at the end. In naval correspondence, the topic sentence in the middle of the paragraph is less likely to be used. If placed at the end, it becomes a summary, a very useful device for pulling the paragraph together and leaving a strong final effect. The summary at the end of a paragraph is not used extensively, however, in naval letters and directives. A summary paragraph for an entire letter is sometimes appropriate.

**Order of Sentences**

A well organized paragraph has its various ideas introduced in an orderly sequence. This sequence may be place order, chronological order, logical order, or order of emphasis. The purpose of all is the same–to lead the reader along the path you wish him to take with a minimum of backtracking or skipping about, and thereby to leave a clearer, stronger impression in his mind.

PLACE ORDER is used for descriptions. The following description is adapted from a report of a shipboard accident, the sort of thing you might have to help prepare if serving as reporter for a board of investigation.

> During preparations for the transfer of fuel, seven sections of 2-1/2-inch hose were connected and rigged between a Navy cargo ship and a fuel oil barge. The hose passed through a hold of the ship in which there were several light fixtures of the type designed for use with globes and guards. The globe and guard were missing from one light fixture, so that the light bulb was unprotected. One man was stationed in the hold and another man stood outside at a hatch that opened into it.

Notice that the writer begins with the rigging of the hose between the two ships. Then he takes us inside the hold of the cargo ship and pictures the situation there. Finally, he gives us the positions of the two men involved in the accident.

The next two paragraphs of the report illustrate CHRONOLOGICAL ORDER, which is the order used for narrating events and for explaining steps in a process.

> Upon signal to commence the transfer of fuel, a pump was started on the barge, and pressure was applied within the hose. A section of hose in the cargo hold ruptured; the hose whipped with great force, struck, and broke the unprotected light bulb.
>
> Arcing from the filament of the broken bulb ignited combustible vapor and caused a flash fire which, although extinguished within a short time, severely burned both men. The man who was stationed inside the hatch died approximately 3 weeks later.

Incidentally, note the amount of concrete detail in both the description and the narrative. This is a condensed report. The original probably had much more detail, such as the names and numbers of the ships, the number of the hold, and the names and rates of the men.

Below is another example of chronological order adapted from a Navy directive. In this case, we have the order in which steps are to be performed in a procedure.

> A selection board convened by the Chief of Naval Personnel considers the applications of fully qualified NESEP candidates in January and February. Those candidates

> determined by the board to be best qualified are designated provisionally selected candidates. The names of candidates thus provisionally selected are published by a BuPers Notice 1510 in March. Provisionally selected candidates for NESEP will be further screened after selection, and prior to ordering to the summer preparatory session, by participation in a form of the Scholastic Aptitude Test (SAT) of the College Entrance Examination Boards. This test will be forwarded to each candidate's command for administration, and will determine the candidate's admissibility to a NESEP college or university. Those who fail to qualify on the SAT will have their status as provisionally selected candidates terminated.

When there are many steps, it is often desirable, in naval correspondence, to present these in tabulated form rather than in a solid paragraph. Usually, they are designated by letters or numbers as appropriate.

Because of the modern emphasis on short paragraphs, it is sometimes necessary to quote several paragraphs in order to see how a unit of subject matter is organized. This is the case in the example below, in which ideas are arranged in LOGICAL ORDER, leading to a conclusion in the final paragraph.

> Let us look at the size of the Navy business management job. You have all, no doubt, thumbed through a mail order catalog and have been impressed with the number of items available. You can buy tools, clothes, toys, drugs, stationery, and all sorts of household appliances and general supplies. Actually the largest catalog carries around 100,000 different articles.
>
> Let us compare this 100,000 with the range of items required by the Navy. In our catalogs we carry some 1,200,000 items–more than 10 times as many as you will find in the largest commercial catalog. The Naval Supply System carries everything from missile parts to brooms, from electronics to potatoes, from uniforms to medicines.
>
> We issue more than 20,000,000 items each year. To meet these demands the Navy alone carries an inventory of around $5 1/2 billion.
>
> In other words, within the total defense supply operations, the Navy portion alone is big business. Measured in terms of dollars, it is twice as large as the entire General Motors industrial complex.

This example demonstrates several things. It shows how facts can be advanced to support a conclusion. In this case, the conclusion that the Navy Supply System is big business is supported by evidence of (1) the range of items carried, (2) the volume of supplies issued, and (3) the size of the inventory. This is also a good example of the use of comparison (Navy Supply compared to a commercial mail order catalog) to help the reader visualize the facts offered. Emphasis is heightened in paragraph 2, by contrast presented in parallel structures. The final paragraph illustrates the summing up and a statement of the conclusion drawn from the evidence.

Time-honored rules of rhetoric have established that for emphasis an item should stand first or last. This has been regarded as true whether one is speaking of the sentence, the paragraph, or the piece of writing as a whole. When we think of ORDER OF EMPHASIS we have this principle in mind. Whether the items placed first and last are remembered longest is open to some question, but certainly, the placing of anything, either at the beginning or at the end, gives it emphasis at the moment. Which of the two positions will give the greater emphasis depends upon the individual situation. Newspapers, for instance, feel that the lead paragraph is the most important, because people want the news quickly and often do not read through to the end of the story. Orators need a strong beginning and a strong ending. The important thing is that the writer should remember that position is a device for gaining emphasis and should consciously use it.

The paragraph below summarizes an account of a night war game. Which statement in the summary is given the greatest emphasis?

> Sleepless, yet exhilarated, the Seabees, in convoy, returned to the training center for field stripping and cleaning of weapons and gear. They had demonstrated their tradi-

tional "Can Do" spirit in obtaining and improvising equipment. They had encountered and surmounted physical obstacles of terrain and weather. They had tested their theoretical military training in a simulated combat situation. Even under harassment, they had successfully solved their mapping problem. In that afternoon and night, the Seabees had tested and proved their readiness.

### Transitions

Transitions are those elements in a piece of writing that help the reader move from one unit to another. They help not only to preserve continuity but also to clarify the relation of what is coming to what has gone before. They may be words, phrases, sentences, or in a long article, even whole paragraphs. We are mainly interested here in transition words and phrases.

The change that the reader must bridge may be any of several. In a description, there is often need to indicate change of place by such words as BEHIND, NEARBY, A FEW YARDS AWAY, or ON THE DECK ABOVE. Change in time may be bridged by LATER THAT EVENING, FORMERLY, THEN, MEANWHILE, AT THE END OF THE MONTH, or another transition to show the relation in time of what is to follow to what has preceded. Other types of transitions include the following: HOWEVER, ON THE CONTRARY, IN ADDITION, NEXT, ACCORDINGLY, IN EFFECT, IN CONCLUSION, FINALLY, and THEREFORE.

Two common faults in the use of transitions are OVERUSE OF CERTAIN WORDS and UNNECESSARY TRANSITIONS.

Three very much overworked transitions are SO, THEREFORE, and THEN. When one of these is used too frequently, the writer has usually failed to think his material through carefully to consider the real relationships of his ideas, but instead has merely strung them together. For example:

WEAK—Two helpers failed to wear their protective goggles during welding operations, and so their eyes were burned by actinic rays.

STRENGTHENED—Two helpers had their eyes burned by actinic rays because they failed to wear their protective goggles during welding operations.

Use of transitions such as FURTHERMORE, ON THE OTHER HAND, and MOREOVER, when they really are not needed is one of the faults leading to a pretentious, ponderous, and sleep-inducing style. If one of these transitions can be eliminated without loss to the reader's understanding, strike it out.

## SOME PRACTICAL SUGGESTIONS

We have been talking about general principles of good style, but here you are with a few penciled notes that must somehow be turned into an acceptable letter. What do you do? How do you get started?

The first thing, of course, is to pull from the files the related correspondence. Also, look up any official directives or other references you will need. Do the necessary research and plan the structure of the letter. Then start writing.

### First Draft

Do not worry too much at this point about spelling, punctuation, or other aspects of a finished style. Get something down. Try to express your ideas as clearly and in as effective order as you can. If the absolutely right word does not come to you, put down the best one you can think of, and mark the spot to improve later if possible. Get the first draft written somehow. You can go back later and smooth it out.

As you become more experienced, you will develop your own individual work habits, but as a beginner, the most important thing is to get your train of thought and your flow of language in motion, and keep going with a minimum of interruption.

### Let It Cool

When you are given a writing job to do, find out the deadline or target date. The reason for this is not so that you can barely squeak by, but to budget your time effectively. Unless the letter is very brief and routine, a certain amount of time must be allotted for preparatory work, a certain amount for the rough draft, and a certain amount for polishing. Apportion the time for each according to the total amount of time you have.

If possible, allow a little time to elapse after you have finished the first draft of your letter before you start going over it again. If you can put the letter aside and work at something else for a time, you will be more objective when you return to it, and will see ways of improving it that would not have occurred to you earlier.

When you first begin to re-read your letter, go through from start to finish, stopping only for the briefest of notes at points you think could be improved. If you try to rewrite as you go along, you will often find that the changes you have made do not fit with what comes next.

### Criticize

Read with a critical eye to determine: (1) that what you have written is correct; (2) that it is clear; and (3) that it is said as effectively as possible.

Obviously, if you have any doubt about the first, return to your references and find out. Do not leave any matter of accuracy undetermined.

The improved objectivity that results from letting your draft cool will help you in determining whether or not it is clear. Do not be too crushed if you find that you can not make sense out of one of your own sentences. It happens occasionally to even the best writers. Just be glad you found it. If you have any doubt whether a passage will be clear to the reader, try it out on someone who has not been thinking about the subject as you have. If your "guinea pig" has any difficulty with it, change it even if that means taking out your favorite sentence.

In behalf of effectiveness, go through the letter looking for useless words. Cut out the lazy and meaningless words; cut down the big ones. Take out the intensives (extremely, undoubtedly, very much) and the overworked introductory phrases (it is to be noted, it is a well known fact that, we call your attention to the fact that). We used the word "overworked" advisedly here, because the use of these phrases is not always unnecessary. Sometimes you need one of them, but if not, delete.

Look for overuse of certain words and replace them with substitutes. Likewise, cull out unnecessary repetition of ideas. Some repetition of both words and ideas is useful for emphasis, but a great deal is merely the result of carelessness. Unless you repeated deliberately and for a purpose, better change it.

### Accept Criticism

By the time you reach this stage you can be pardoned if you feel a certain parental pride in this brain child of yours. This is where you run into danger. Do not permit yourself to become fond of the way you have said something. The minute you do you become loath to change your wording, and this means trouble in two ways: first, most writing can be improved, and therefore you should avoid closing the door to criticism, either your own criticism or that of another reader; second, and this is basic to most military writing, you are not going to sign this letter. If it has to go through several reviewers before it is signed, you may as well reconcile yourself to the fact that it may be changed. Even if it goes directly from you to the captain, do not feel distressed if he insists on having it worded his way before he puts his name on it. He has to take the responsibility for it.

This does not mean that you should not defend what you have written if you think there is any misunderstanding, or that any of your reasoning has been overlooked. A certain amount of polite explanation is justifiable, and in fact, a part of your duty. Just do not allow yourself to feel that criticism of your letter is an attack on you. If you do, you will diminish your capacity to learn from experience, and to improve your letter writing as you go along.

## ROUTING AND CONTROL OF CORRESPONDENCE

You may be assigned to handle incoming mail in your office. In a small JA office aboard ship such an assignment may not involve a very large volume of mail, but if you are assigned to a large JA office or law center ashore, the opposite will probably be true. In any case, it is important that you know what happens to incoming mail from the time it reaches your office until it is finished business.

The volume of mail received by naval activities today makes it desirable to eliminate unnecessary operations wherever possible. In doing so, however, it is important to ensure that adequate records of all important correspondence are maintained. Experience and judgment are required to determine which mail need not be controlled, which should be controlled, and how the necessary controls can be maintained most efficiently.

The operations that should take place when official mail comes into your office, whether aboard ship or ashore, are basically the same. They are:

- Sorting and opening.
- Routing.
- Controlling (when appropriate).

## INITIAL SORTING

Upon receipt, mail is given an initial sorting which separates that to be routed without opening from that which requires opening. As it is separated, mail not to be opened is sorted into the compartments of a sorting box for direct delivery to the proper section or officer concerned. Mail to be opened is placed to one side, to be dealt with later.

## OPENING AND SECONDARY SORTING

After the initial sorting, the remaining mail is opened. After opening, the mail is again sorted. At this time, routine mail–that which presents no special problem–is separated from that which is nonroutine. The sorter does not read farther than the address line, or at most the subject line, so only readily identifiable items can be handled as routine. This represents the bulk of mail.

Mail requiring priority handling such as congressional mail or action mail is promptly logged and/or put on a controlled routing sheet and delivered to the action officer without other routing. Should the person responsible for taking the action desire comments or information from other departments prior to making a reply to the correspondence or taking action, he should indicate this on the route sheet.

## TIME-STAMPING

Some mail, such as contracts and congressional mail, requires time-stamping, and this should be done during the first or second sorting. Section 2015 of the *JAG Manual* requires the first command receiving a claim to stamp or mark the date of receipt upon the letter of claim or claim form. Time and date stamping should not be done indiscriminately, since the stamping process delays delivery to the action officer.

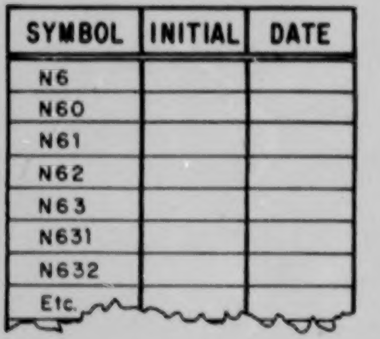
## SORTING FOR CONTROL

Mail that remains for the third sorting includes chiefly that for which the action officer is not readily determined and mail that is likely to require control. The main purpose of this sorting is to separate the mail requiring controls.

## ROUTING

Mail that does not require controlling is routed without the use of a route slip or mail control form. When routing mail that must go successively to several officers, a stamp may be used with check boxes for the several sections concerned. See figure 2-4.

Mail should be routed to the action or primary interest officer first. Usually, it can go to other interested offices after the action has been completed for information purposes, with a copy of the reply attached.



| SYMBOL | INITIAL | DATE |
|---|---|---|
| N6 | | |
| N60 | | |
| N61 | | |
| N62 | | |
| N63 | | |
| N631 | | |
| N632 | | |
| Etc. | | |

192.4

Figure 2-4.–Stamp for Routing Mail.

## USE OF CODES

The use of codes assists in the routing of correspondence. Any naval office may use a code system. For example, the following might be part of the system used in a law center:

| Code | Officer |
|---|---|
| N6 | ACOS for Legal Affairs/SJA/Dir, Law Center |
| N60 | Asst SJA/Asst Dir, Law Center |
| N61 | Asst SJA–Military Law |
| N62 | Asst SJA–International Law |
| N63 | Asst SJA–Administrative Law |
| N631 | Legal Assistance Officer |
| N632 | Claims Officer |
| Etc. | Etc. |

## PRINCIPLES OF MAIL CONTROL

Mail control is defined in the Navy as any procedure used to make a record of the receipt, location, or dispatch of mail. The definition includes logging or preparing other records to indicate receipt; providing signature for classified and registered mail, if required; following up to ensure action; providing information on location of the item; microfilming, when appropriate; and other methods.

Since controls require additional work and ensuing delays, they should be used only for a few selected types of important mail. Yet the fact that they are definitely needed for certain types of mail should never be overlooked.

## RECORDS DISPOSAL

How important are records in your files?

Important enough that Congress has passed laws governing their disposition and fixing penal[illegible] for their unauthorized destruction. These [illegible] apply to all official Government records, n[illegible] to those that are classified.

Th[illegible] sometimes monotonous, all tasks connected with files, including their disposition when no longer needed, must be taken seriously. Since you may be responsible for the work of juniors, you may be directly involved in this problem of disposition.

Decisions whether to save or not save cannot be avoided by simply saving everything. Sooner or later, filing cases fill up and something has to be done. No matter how firmly you believe that if you get rid of it today, somebody will want it tomorrow, you can't go on collecting forever. On the other hand the "if in doubt, throw it out" school of thought, if allowed to operate unchecked, goes to the opposite extreme.

One of your jobs is to be able to tell what should be held in the files for a period of time and what should, or must, be destroyed or transferred for preservation, under authorized Navy-wide records retention and disposal standards contained in SECNAVINST 5212.5.

## DEFINITION OF RECORDS

To begin with, it is quite possible that not everything in your files is an official record. Pamphlets, books, spare copies of letters or directives, and what-have-you are sometimes allowed to take up space for long periods because nobody took the time to find out whether they had any value. But, regardless of whether the material is considered an official record, it should be disposed of regularly and not allowed to occupy file space longer than necessary.

The basic legislation covering records disposal (Records Disposal Act of 1943) defines Government records essentially as follows: All documentary material, including books, papers, maps, and photographs, made or received by an agency of the U.S. Government in connection with the transaction of public business and appropriate for preservation.

Official correspondence may be defined as all recorded communications sent or received by a person in the Naval Establishment in the execution of the duties of his office. *Navy Regulations* provide that no person shall destroy or remove from official custody any records without proper authority.

Nonrecord material, then, may be defined as any material which serves no documentary or record purpose. In other words, it is material that just is not worth having around except for a limited time. Within this category are such things as: rough drafts, extra copies of letters kept for convenience of reference or for tickler purposes; some forms of publication received from other than Government agencies and commercial firms (catalogs, trade journals); items of only temporary value which serve no purpose once action is completed; reproduction materials, such as stencils and offset plates; and stenograph tapes. (See Appendix G, SECNAVINST 5212.5).

It isn't always easy, or necessary, to draw a neat distinction between record and nonrecord material and apply a hard and fast rule to each item. Each should be matched with a retention standard from SECNAVINST 5212.5 and regularly disposed of by destruction or transfer to a records center. On rare occasions, the commanding officer may decide that because of some special circumstance, some items normally scheduled for destruction should be retained longer or indefinitely. In such a case the items would be transferred to a records center for further retention, rather than destroyed. But if you are as familiar with the business of your office as you should be, you won't have much trouble in applying the right disposal provisions to the records as they accumulate. And, normally, records should be disposed of promptly as scheduled.

## RULE OF THUMB

Going back to the wording of the *Records Disposal Act*, "appropriate for preservation" gives you a good rule of thumb as to whether or not an item should be destroyed or even filed in the first place, although almost everything that comes into your hands is filed for at least a short time. This includes copies of outgoing correspondence. But that in itself doesn't make each item "appropriate for preservation." They have to be reviewed periodically and either transferred to a records center for longer retention or permanent preservation, or disposed of locally as directed.

## WHAT GOVERNS DISPOSAL

The *United States Criminal Code*, 18 USC 2071, provides penalties for the unlawful removal or destruction of Federal records. The *Records Disposal Act* of 1943, as amended, establishes means to obtain legal authority for the destruction of Government records which have no further value. This authority is obtained through the National Archives, a part of the General Services Administration. It is responsible for general procedures for disposal of Federal Government records.

### Disposal Authority

SECNAVINST 5212.5 series provides the authority for the disposition of naval records, including naval correspondence, accumulated by all naval activities and offices, ashore and afloat. Any recommendations for changes to officially authorized retention and disposal standards it contains should be addressed to the Chief of Naval Operations. All recommendations for changes should include a description of the records, a statement of their purpose and use, and a justification for the change. A sample should be submitted for any record recommended for periodic destruction.

## ORGANIZATION FOR DISPOSITION

The person responsible for custody of a group of records has also the responsibility for seeing that they are regularly disposed of in accordance with the appropriate disposal instructions. Aboard ship, Parts I and III of SECNAVINST 5212.5 series should be available in sufficient numbers so that one copy may be routed to each department.

To ensure that the handling of records is consistent and is not left to chance, one officer is usually assigned the collateral duty of coordinating all records disposal aboard an activity, either ship or station. This officer would then take charge of the physical disposition of all records that have been designated for either transfer to a federal records center or destruction.

As the Legalman in charge of the JA office files, you must be available to assist the responsible officer in ensuring that your records are complete and documented.

## Federal Records Centers

Seventeen Federal Records Centers have been established at locations conveniently accessible to the various districts and ocean areas. Flag command records to be preserved, however, are centralized at the Federal Records Center, Mechanicsburg.

The Chief of Naval Operations and the Commandants, Naval Districts (district management assistance officers) are responsible for liaison with Federal records centers. Requests for assistance in transferring records or applying disposal provisions should be made to the district commandant (district management assistance officer), to cognizant office, bureau, command, or the Chief of Naval Operations.

## General Type Records

With the exception of those specialized records, which we will later show, which are specifically designated for centralization at a single records center, the following types of general records are transferred to records centers, and normally to the nearest center:

- Records specifically designated in SECNAVINST 5212.5 for transfer. These should be transferred as scheduled therein, or earlier if circumstances permit.
- Records designated in SECNAVINST 5212.5 for indefinite retention and any records for which you can find no applicable disposal authority, although you should be able to match all records with one of the authorized retention and disposal standards. These should be transferred as soon as they have served the immediate needs of the activity.
- Any relatively inactive record of any age or type when it is determined that savings can be effected by the transfer and it is not required for local operating purposes.

## Methods of Disposition

There are two ways that records which have outlived their current value may be disposed of: (1) local destruction, or (2) transfer for later destruction, or, if records are permanent, for preservation, eventually at the National Archives in Washington, D.C.

DESTRUCTION.—Most unclassified records are actually destroyed in the office. However, if large quantities are involved, they may be sold for wastepaper or scrapped. Classified items must be destroyed in accordance with current security regulations. Nitrocellulose base film is usually destroyed by burning since it can be a fire hazard. When a state of war exists or when hostile action appears imminent, a commander may destroy records as an emergency measure. Reasons might be that retention of the records is prejudicial to the best interests of the country or that the space the records take up is urgently needed for more important military purposes. In cases of this nature, the commander notifies the Chief of Naval Operations that the records have been destroyed.

At sea, unclassified as well as classified records should be burned. Ashore, unclassified records may be scrapped or sold as wastepaper provided the records are either treated to destroy word content (perhaps by shredding) or have inserted in the contract a clause prohibiting the resale of the records or their use as records or documents.

TRANSFER.—Comparatively few records are actually transferred for preservation. Most records are authorized for destruction after a definite period of time or after a specified event takes place. The General Services Administration regulates the procedures for the transfer and preservation of all records having permanent value for administrative, legal, research, historical, or other purposes.

PRESERVATION.—By preservation we mean indefinite or permanent retention of those records having some value—not retention at the local level, which is simply filing, but retention at a FEDERALLY AUTHORIZED location.

## Terminating Files

In order that records may be disposed of systematically and in blocks, files are terminated periodically and a new file series begun. This makes the later job of separation and removing the records for destruction or transfer much easier. Files are terminated (cut off) at the end of each calendar year. If your volume of correspondence is too large for this, you can terminate them at the end of June as well—or even monthly. As a matter of fact, since some records reach the age for destruction every day, it is perfectly legal to remove and destroy them day by day. You'll soon find, though, that this method just isn't practical.

To terminate the files means simply to close the entire file and start a new and separate file just like it to run until the next termination. The terminated file, since it is relatively inactive, is put in a less convenient location.

### Reviewing

The instructions for records disposal contains listings of material or items usually by subject matter. It is an easy matter, then, to determine whether a particular group of documents should be destroyed locally, held in the files until eligible for destruction, or transferred to a center.

The way to ensure that records are disposed of within a reasonable time of the scheduled date is to visibly post (label) the records disposal instructions for each file maintained, showing disposal authority. Then, at stated intervals, site check your posted instructions and take appropriate action. Remove for immediate burning, scrapping, or shipping, those groups which have passed the deadline for final disposition.

A word of caution is in order. To do the job properly, you should check to be sure that, even though the disposition date has passed, you do not dispose of anything on which action may still be pending.

Those records designated in disposal instructions for transfer are transferred as scheduled or earlier. Any records designated for permanent or indefinite retention, and any for which you cannot find a disposal authority are transferred as soon as they have served the needs of the activity. Also, any inactive record may be transferred when no longer needed for local operating purposes and when savings can be effected by the transfer—regardless of whether SECNAVINST 5212.5 provides for its regular transfer

### Destruction Dates

Federal law makes it mandatory that, except in extenuating circumstances, records scheduled for destruction must be destroyed. This doesn't mean, however, that each and every item must be disposed of on THE DAY authorized for destruction. You will recall the discussion in previous paragraphs on terminating the files. Individual commands set up any sort of destruction program they wish, such as once every 3 months, semiannually, or annually as convenient. What the law intends is that records no longer having value shall not take up valuable space over long periods of time. This is especially important on ships, where every square foot of space has an allotted purpose. It must be emphasized that records are not to be destroyed before the scheduled destruction date except in case of emergency.

### Where to Ship

Certain specialized record categories are centralized at designated centers for convenience of administration and reference. The records to be centralized are listed in Navy records disposal schedules for transfer to the designated specialized center.

SECNAV instruction 5212.5 indicates that personnel records are always shipped to the records center shown:

| | |
|---|---|
| Civilian personnel records | National (Civilian) Personnel Records Center<br>St. Louis, Missouri |
| Navy and Marine Corps military records and courts-martial records | National (Military) Personnel Records Center<br>St. Louis, Missouri |

Other records are shipped to the appropriate Federal Records Center listed in Appendix C, SECNAVINST 5212.5. As a general rule, this is the nearest center.

### Packing for Shipment

Records are packed in their original file arrangement in standard-sized cartons 15 X 10 X 12 inches in size. These cartons are supplied by the records centers on request. Each carton holds 1 cubic foot of material. Letter-size documents are packed on the 12-inch side of the carton, legal-size on the 15-inch side. Odd-size items which are not suitable for shipment in the standard carton may be shipped in the most practical container available. Shipments of less than 1 cubic foot may be sent in envelopes or small packages. Records are grouped by organizational unit (subject) and placed in containers in the original filing sequence.

MARKING.–The name and address of the transferring activity and the sequential box number (box 1 of 3, box 2 of 3, etc.) should be clearly marked on the narrow side of each container.

TRANSMITTAL DOCUMENTS.–A Records Transmittal and Receipt Form, Standard Form 135, is used as a transfer document. This form is forwarded to the appropriate center in triplicate. The form should provide the center with all the information needed to identify and service the records. It must also indicate the disposal provision from SECNAVINST 5212.5 to be applied to each record series. Actual folder-by-folder listings are not necessary; a brief description of each record series and the dates covered are sufficient.

The records center acknowledges receipt of records by returning a copy of the transmittal sheet. The center shipment number will be placed on all acknowledgements of receipt. A future request for service on transferred records will be expedited if this number is referenced in the request.

### Classified Records

Insofar as practical, classified documents must be reviewed to determine whether or not they can be downgraded or declassified prior to being forwarded to records centers or to the National Archives for storage. When this is done, certification of classification review must be entered on or affixed to the transmittal form, Records Transmittal and Receipt Form, SF 135, or similar document, and appropriate changes reflecting downgrading or declassification must be indicated on each document.

### Access to Center Records

Record centers are authorized to provide reference service only to, or with the permission of, the activity transferring the records. Requests for information or documents received from other than the transferring activity are honored only with the approval of the transferring activity. If that activity is disestablished, the approval is obtained from the Navy Department component that commanded the former activity. Therefore, to eliminate needless correspondence and the need for repetitive approvals, transferring activities are encouraged to grant blanket approval to the center for the release of information or release of the files themselves. When authorized to do so, the center holding the records will compile or extract information from the records on request. On some routine matters, the center may take final action based on record content. Reference service may be obtained directly from the center by the activity involved.

## SECURITY

As a Legalman, you will often be required to work with classified information. There will be courts-martial trials and investigations in which classified information will be involved and may possibly be admitted in evidence as exhibits. There will also be the routine work-a-day classified documents coming into and going out of your office which are necessary to the conduct of official business. You have already covered the basics concerning preparation, handling, transmission, and destruction of classified material in *YN 3&2*. Therefore, we will concentrate on security orientation, education, and training in this chapter. Treatment of classified material in courts-martial records is covered in chapter 4.

### PURPOSE OF PROGRAM

All personnel who have been granted access to classified material must be knowledgeable as to security orientation, education, and training. This program is designed to:

- Familiarize all personnel granted access to classified information with proper security measures necessary in performing their duties.

- Remind all echelons of command of their responsibility for ensuring that classified information is effectively and economically safeguarded.
- Ensure conscientious and willing compliance with security regulations, procedures, and practices.
- Remind commands of their responsibilities in proper classification, upgrading, downgrading, and declassification procedures as outlined in chapter 4 of OPNAVINST 5510.1.
- Inform personnel with access to classified material of the hazards involved due to unauthorized disclosure, and impress on these personnel their responsibility in protecting classified documents.
- Inform personnel of their responsibility to report attempts by foreign agents to obtain U.S. classified information.
- Familiarize personnel with the techniques and devices used by foreign agencies to obtain classified U.S. information.
- Advise personnel against using the telephone as a means of transmitting or discussing classified material.
- Make personnel aware of the disciplinary action which may result from unauthorized disclosure of classified documents.

## RESPONSIBILITY

Commanding Officers are held responsible for proper indoctrination of personnel in safeguarding classified material. However, if you are the senior LN in your office, you are responsible for proper indoctrination of personnel under your supervision. You must be sure that your men are fully aware and execute a policy of strict compliance with all security regulations at all times.

Effective security is accomplished when you recognize, and understand, and apply the requirements that preclude compromise and subversion. Some individuals who work with classified information on a daily basis sometimes become careless in employing proper safeguard measures. When you see this happen in your office, take corrective action immediately.

## EFFECTIVE SECURITY

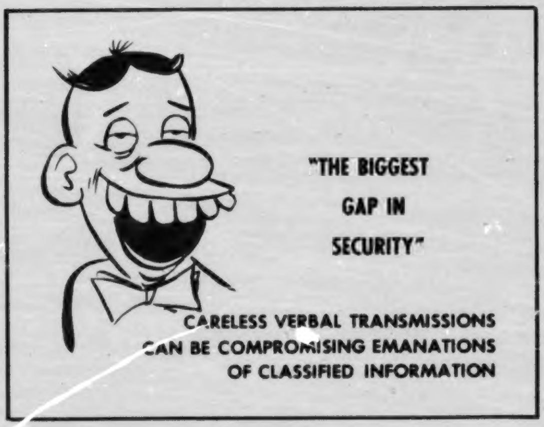
A primary objective in organizing and conducting an effective security program should be to impress on your personnel that security is not something separate and apart from their other duties—it is a natural element of every duty they perform.

An effective security program will assist you in making your men security conscious at all times. There are various approaches to organizing a security program which has real meaning and creates a lasting impression on your men. Posters, cartoons, charts and films are effective tools if properly used. Figures 2-5 through 2-9 are shown as examples.

When you use posters, place them in areas of maximum travel, and always at eye level. Use various types and rotate them often to combat boredom. A person becomes security conscious only when you stimulate his interest and provide motivation for personal involvement.

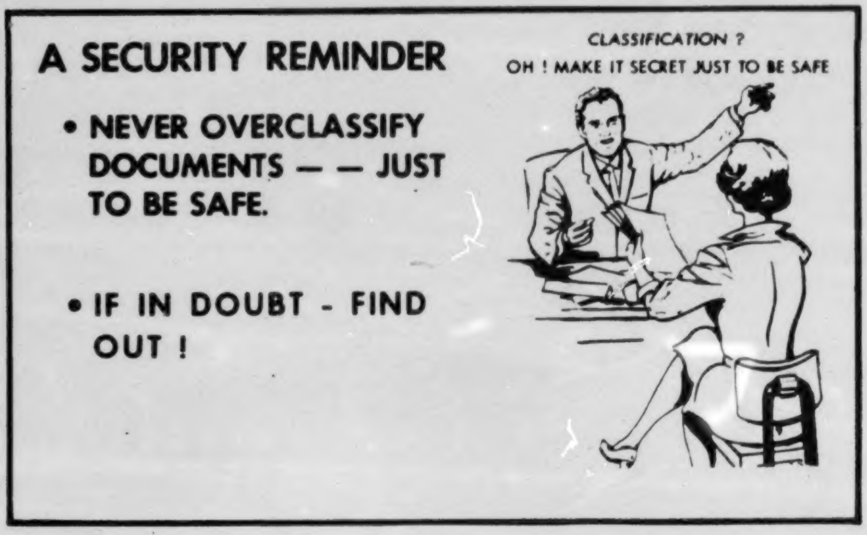
When you have instilled a sense of responsibility in your men, a trait which eliminates carelessness, ignorance, or plain indifference, you have accomplished security consciousness.

Effective security can only be achieved when personnel know the HOW, WHEN, and with WHOM to discuss classified information.


"THE BIGGEST
GAP IN
SECURITY"
CARELESS VERBAL TRANSMISSIONS
CAN BE COMPROMISING EMANATIONS
OF CLASSIFIED INFORMATION

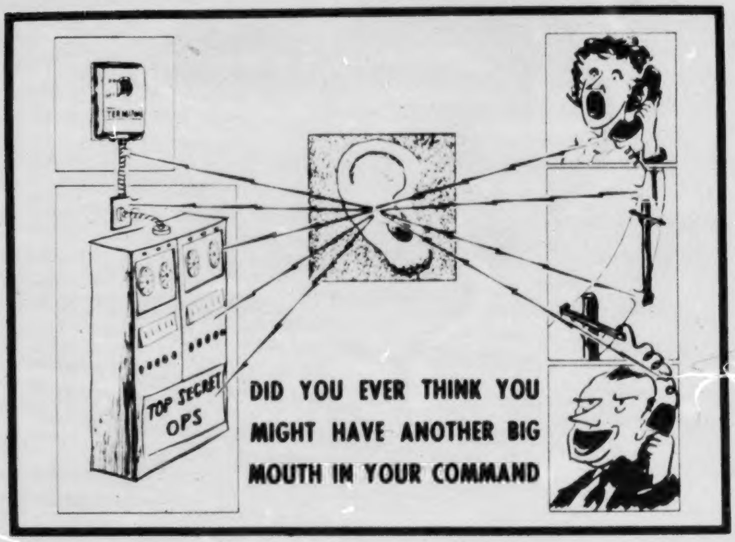
40.67 (138F)

Figure 2-5.—Security Training Cartoon.


A SECURITY REMINDER
• NEVER OVERCLASSIFY DOCUMENTS — — JUST TO BE SAFE.
• IF IN DOUBT - FIND OUT !
CLASSIFICATION ?
OH ! MAKE IT SECRET JUST TO BE SAFE

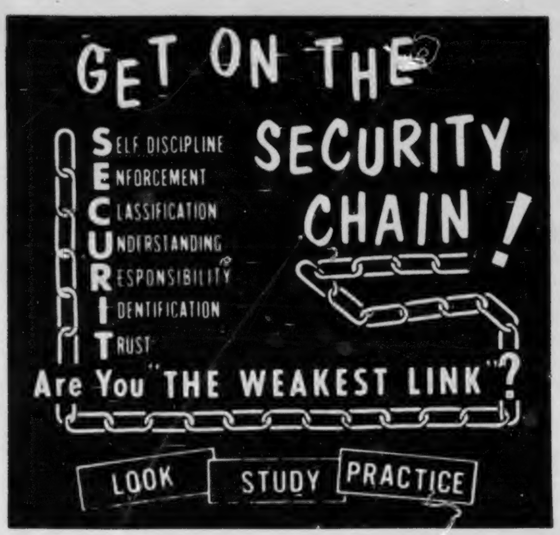
40.67 (138F)

Figure 2-6.—Security Training Poster.


TOP SECRET OPS
DID YOU EVER THINK YOU MIGHT HAVE ANOTHER BIG MOUTH IN YOUR COMMAND

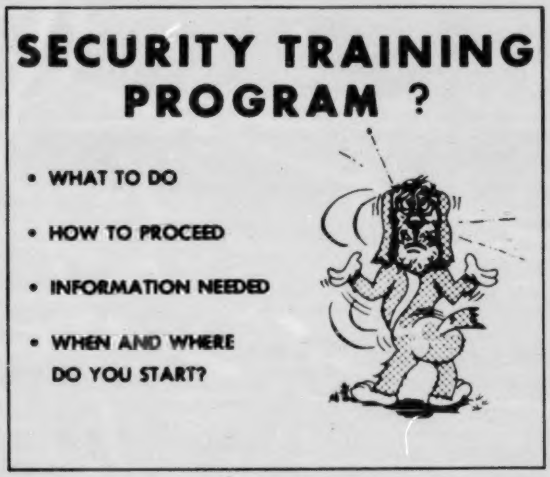
40.67 (138F)

Figure 2-7.—Security Training Poster.


GET ON THE
SECURITY
CHAIN!
SELF DISCIPLINE
ENFORCEMENT
CLASSIFICATION
UNDERSTANDING
RESPONSIBILITY
IDENTIFICATION
TRUST
Are You "THE WEAKEST LINK"?
LOOK
STUDY
PRACTICE

40.67 (138F)

Figure 2-8.—Security Training Poster.


SECURITY TRAINING PROGRAM ?
• WHAT TO DO
• HOW TO PROCEED
• INFORMATION NEEDED
• WHEN AND WHERE DO YOU START?

40.67 (138F)

Figure 2-9.—Security Training Cartoon.

## BRIEFINGS

Required security briefings take the form of:

- Indoctrination briefings
- Security briefings
- Foreign travel briefings
- Potential Hostage briefings

Indoctrination briefings are a must for personnel whose job requires access to classified material. The briefing should be conducted shortly after a person checks aboard his duty station and before he is granted access to classified information. Indoctrination briefings are also necessary for personnel who, although not required to have access to classified material, are closely associated with cleared personnel, or who are attached to a command, the primary mission of which involves highly classified material and information. The indoctrination briefing places emphasis on:

- Personnel having knowledge of classified defense information must not disseminate it until it has been determined that the recipient has the appropriate security clearance and needs the information to perform his official duties. Each person has the responsibility for making this determination.
- Non-possession of classified information unless he has the necessary clearance and a need for the information in the performance of his duties.
- Making the individual keenly aware of his moral and legal responsibility for any classified material or information he may have in his possession. That he is required to ensure that such material and information is given the degree of protection which it requires.
- The possibility of espionage and subversion attempts, and the defensive steps that one must take under such attempts.
- Discussion of classified information on the telephone.

### Security Briefings

It is not enough to ensure that an initial indoctrination briefing is accomplished for new personnel; you must also ensure that periodic briefings are conducted for all personnel having access to classified information. In addition, security briefings may be appropriate when:

- An abnormal number of security violations occur.

- There is an increase in quantity or sensitivity of classified information being handled or,
- When the mission of a command increases in terms of security risk involvement (personnel or physical).

It is of paramount importance during a security briefing to impress upon the persons the need to promptly report suspected or known attempts by unauthorized personnel to obtain classified information.

### Foreign Travel Briefings

When travel is to be performed through communist controlled countries, the commanding officer must assure that the person who is to perform this travel undergoes a defensive Foreign Travel Briefing prior to departure. In the interest of national security, and when deemed appropriate by the commanding officer, dependents may also be provided with the same briefing. It should place special emphasis on the various areas of interest to hostile intelligence services, the techniques used by these services, and on the nature of conduct or activity that could place a person in a compromising situation.

### Potential Hostage Briefings

When a person has close ties with relatives who reside in a communist country, a potential security problem exists because there is a possibility that communist authorities will threaten the "hostage" relative unless the individual cooperates with the communist intelligence collection effort. A spouse with relatives living in a communist country may also prove to be valuable to the communist intelligence community. Close relatives are considered to be an individual's parents, spouse, child, brother or sister, or the parent, child, brother or sister of the individual's spouse at the present time.

To lessen the risks involved, a program of defensive briefing has been established for the purpose of alerting personnel who may be subject to hostage pressure and for ensuring that any attempt of coercion is promptly reported to the appropriate authority.

If a security clearance is being initiated for a person who has relatives residing in a communist country, the commanding officer must ensure that the Naval Investigative Service is so informed to enable them to conduct the Potential Hostage Briefing as a part of the security clearance investigation.

Military personnel who receive the command-administered defensive briefing must sign three certified copies of the briefing form which is obtained from the Naval Investigative Service. The executed copies are distributed:

- First copy to individual's service record.
- Second copy to BuPers.
- Third copy to the Director, Naval Investigative Service.

When the Naval Investigative Service administers the Potential Hostage Briefing, they will forward a copy to the Director, Naval Investigative Service.

## DEBRIEFINGS

When personnel no longer require access to classified material, are transferred, or separated from active duty, the commanding officer must ensure that a security debriefing is conducted. The purpose of this debriefing is to inform the individual of his responsibility in protecting classified material he has knowledge of, and serves as a reminder that he is to report to proper authorities any attempt by unauthorized individuals to obtain classified information which he may possess.

### Debriefing Statement

The Security Termination Statement (OPNAV Form 5511-14) executed by civilian and military personnel must be accomplished when:

- An individual terminates active military or civilian employment.
- An individual is reassigned from sensitive to less sensitive duties.
- An individual's security clearance is terminated for cause.

When the action described above has been accomplished, the Security Termination Statement becomes part of the person's record. For Naval personnel, the original of the Security Termination Statement is filed in the individual's service record and a copy is placed in the command files where it remains for a minimum of two years. When the individual is separated from active duty, the Security Termination Statement is forwarded, along with the closed out service record, to BuPers.

### Oral Debriefing

Oral debriefing is accomplished when the commanding officer considers it necessary in safeguarding classified information. It applies to those personnel who have been granted Limited Access Authorizations. This type of authorization grants the individual access to Top Secret, classified defense information (e.g., Crypto), or other sensitive information. The debriefing must be conducted prior to transfer or separation from active military duty.

The oral debriefing is directed solely toward protecting classified defense information and must include the purpose to be accomplished by the debriefing, the serious nature of the subject matter which requires protection, the need for caution and discretion, and advice concerning any travel restrictions which may be applicable.

Each person who is required to undergo an oral debriefing is also required to acknowledge receipt of this debriefing by signing a Security Termination Statement (OpNav Form 5511-14) or termination debriefing forms developed for special access programs.

## CLASSIFICATION MANAGEMENT

The Office of the Secretary of the Navy is responsible for developing, directing, and monitoring the Classification Management Program. The Navy classification program has been established to:

- Provide central policy direction for all aspects of security classification.
- Ensure proper classification of Navy originated defense information.
- Eliminate unnecessary expense to the government and industry in protection and handling of information which no longer requires security classification.

### Responsibility

Within your command, the commanding officer is responsible for administering the Classification Management Program. The program includes classification, reclassification, and declassification of all classified material.

## CLASSIFICATION CRITERIA

Material or information must be classified when one or more of the following are present and the unauthorized disclosure of the information could result in damage to our national defense:

- The information provides the United States, in comparison with other nations, with a scientific, engineering, technical, operational, intelligence, strategic, or tactical advantage.
- Disclosure of the information would weaken the international position of the United States, create or increase international tensions contrary to U.S. interests, result in a break in diplomatic relations, or lead to hostile, economic, political, or military action against the United States or its allies, thereby adversely affecting the national defense.
- Disclosure of the information would weaken the ability of the United States to wage war or defend itself successfully, limit the effectiveness of the armed forces, or make the United States vulnerable to attack.
- There is sound reason to believe that other nations do not know that the United States has, or is capable of obtaining, certain information or material which is important to the international posture or national defense of the United States.
- Information involved is unique, and is of singular importance or vital to our national defense.
- The information represents a significant breakthrough in research and has a military application potential in a new field or may involve a radical change in an existing field.
- There is sound reason to believe that knowledge of the information would:

Provide a foreign nation with an insight into the war potential or the war defense plans or posture of the United States.

Allow a foreign nation to develop, improve, or refine a similar item of war potential.

Provide a foreign nation with a base upon which to develop effective countermeasures.

Weaken or nullify the effectiveness of a defense or military plan, operation, project, or activity which is vital to our national defense.

## DOWNGRADING AND DECLASSIFICATION

A mandatory continuing program based on a time schedule has been established for automatically downgrading and declassifying documents originated within the Department of Defense.

The automatic downgrading and declassification system was instituted to ensure that all classified matter is available to the general public when secrecy is no longer necessary and to relieve the originator of future concern for the classified aspects of documents or material they have produced.

Depending on the contents of the material, classified information is placed into one of four categories. The assigned category indicates whether the material may be declassified automatically in the future, and if so, when.

On 8 March 1972, the President signed *Executive Order 11652*. The intent of the executive order was that less official information would be classified, more declassified, and that which is classified would be better protected. The *Executive Order* became effective 1 June 1972.

As of 1 June 1972, a document assigned to group 1, 2, or 3, and all information or material which is not group marked, is excluded from declassification by the general declassification schedule.

Group-4 documents are generally subject to the general declassification schedule. However, individual items within the body of this material may be exempted from the general declassification schedule if this exemption is determined by a person with top secret classification authority, who has responsibility over the item, and there is enough time for all holders of the information to receive notification of the exemption before the new schedule for downgrading and declassification date or event.

With few exceptions, classified material is conspicuously marked on the front cover or on the first page, with an appropriate downgrading and declassification notice as follows:

| Type of Material | Marking |
|---|---|
| • Group 1,2,3 and all information or material not group marked | Classified by:<br>Exempt from general declassification schedule of Executive Order 11652.<br>Exemption category: (1,2,3, or 4)<br>Declassify on: (effective date or event) |
| • Group-4 (Item exempted from general declassification schedule) | Downgrade to:<br>Secret on: (effective date)<br>Confidential on: (effective date)<br>Declassify on: (effective date)<br>Classified by: |
| • Group-4 (Subject to schedule) | Classified by:<br>Subject to general declassification schedule of Executive Order 11652.<br>Automatically downgraded at two-year intervals.<br>Declassified on 31 December (year) |

These procedures apply to electrically transmitted messages as well as to other forms of recorded information. The last line or paragraph of the transmitted message must show:

- Declass (specific date day/month/year or event),

- General Declassification Schedule (GDS) (declassification year), or,
- Exempt from General Declassification Schedule (XGDS) (number category)

The schedule for automatic downgrading and declassifying follows:

- TOP SECRET–Information and material is downgraded to SECRET two calendar years after origination, downgraded to CONFIDENTIAL four years after origination, declassified ten years after origination.
- SECRET–Information and material is downgraded to CONFIDENTIAL two calendar years after origination, declassified eight years after origination.
- CONFIDENTIAL–Information and material is declassified six calendar years after origination.

In each instance, downgrading or declassifying occurs at the end of the appropriate full calendar year following the year in which the information or material was originated. Example: A document classified TOP SECRET on 25 February 1973, would be downgraded to SECRET on 31 December 1975, to CONFIDENTIAL on 31 December 1977, and DECLASSIFIED on 31 December 1983.

**Exemption from General Declassification Schedule**

The exempted information or material, whether Top Secret, Secret, or Confidential, must fall in one or more categories.

- Furnished by foreign governments or international organizations.
- Specifically covered by statute (e.g., Restricted Data and formerly Restricted Data) or pertaining to cryptography, or disclosing intelligence sources or methods.
- Disclosing a system, plan, installation, project, or specific foreign relations matter the continuing protection of which is essential to the national security.
- Disclosure would place a person in immediate jeopardy.

In each instance, the Top Secret authority specifies by number the exemption category being claimed. Unless circumstances preclude, the classification authority specifies a date or event for the automatic declassification of the information or material involved.

If it becomes necessary to classify information or material by broad category, such as nuclear propulsion data, the classification authority must obtain the approval of CNO.

When possible, the original classifying authority is shown, including if applicable, the identification of the controlling classification guide. If this is not shown, the person who signs or approves the document or directive is deemed the classifier.

All material which is still classified at the end of 30 years is reviewed for declassification. The only way this material may continue as classified is with the approval in writing of the originating department head. In the event the department head determines that the material must continue in a classified state, he must set a specific date for declassification.

## Chapter 3

# THE LAW LIBRARY -- ITS USE AND MAINTENANCE

Although there's no such thing as a complete collection of legal reference material, such a collection, if it did exist, would consist of several million volumes. The collections with which you will be dealing are of much more modest proportions–only at a large law center will the collection exceed a few thousand volumes. But whatever the size of the collection, your responsibilities for its maintenance and use will be the same. In this chapter, you will be introduced to typical components of a law library. You will be taught how to use the materials and how properly to cite bibliographic authority. Finally, you will be given some suggestions in maintaining the collection.

### THE COLLECTION

Legal reference materials fall into one of three broad categories: (1) primary sources; (2) finding tools; and (3) secondary materials. Primary sources contain "the law." Finding tools, as the name implies, are used to discover precisely what volume of a primary source contains the law that is applicable to a particular fact situation. Secondary materials are discussions or explanations of the law which examine legal concepts and problems from both practical and theoretical points of view. Although they are not binding legal authority, they are useful in the formulation of arguments and will frequently be the most complete collection of materials on a particular legal subject.

### PRIMARY SOURCES

Primary sources have been defined as "those recorded rules of human behavior which will be enforced by the state." These rules may be recorded in a Federal or State statute, administrative and executive regulations issued pursuant to a legislative authorization, or court decisions.

#### Statutes

Statutes are published by jurisdiction and in chronological order of enactment. Chronological publications of laws are called session laws. For example, Federal laws are published chronologically in *Statutes at Large*. It is immediately apparent that laws published in this fashion are, by themselves, of little use to the average researcher, because he has no way of knowing on what day a piece of legislation relative to a given problem was passed. To solve this dilemma, laws are codified according to subject matter. Laws relative to a particular subject, regardless of their dates of passage, are found together in the codification. Federal statutes are codified officially in the *United States Code*. A frequently used unofficial codification is the *United States Code Annotated*. Similar schemes are employed to make State statutes usable.

#### Regulations

Administrative and executive regulations are quite analogous to statutes. They are officially printed, along with a good many other things, in the *Federal Register*. Because the *Register* is in chronological order, the researcher has many of the same problems in locating a regulation that he has in finding statutes. To solve this problem, the *Code of Federal Regulations* was developed, which serves the same function for regulations that the *U.S. Code* serves for statutes.

### Court Decisions

One of the bedrock principles of Anglo-American jurisprudence is *stare decisis et non quieta movere*, "to adhere to precedent and not to unsettle things which are settled." The full implementation of this doctrine of *stare decisis* means that prior decisions of courts of competent jurisdiction are part of the controlling law.

Cases are collected into chronologically arranged volumes and constitute a very important part of any law library. You will be primarily concerned with reports of cases of the United States Supreme Court, United States Courts of Appeals, Federal District Courts, the United States Court of Military Appeals, and the Navy Court of Military Review.

Another series of reports which you may have in your library is the *American Law Reports Annotated* (ALR) published by the Lawyer's Co-operative Publishing Company. This series contains selected cases from all American jurisdictions and the annotations included are a valuable source of citations to other cases on a given point.

The official report of the U.S. Supreme Court is *United States Reports*. Unofficial reports of the same decisions are West Publishing Company's *Supreme Court Reporter* and Lawyers Co-operative Publishing Company's *Lawyers Edition of the United States Supreme Court Reports*. Decisions of the U.S. Courts of Appeals are not reported officially but are collected in West's *Federal Reporter*, and selected decisions of Federal district court cases are reported unofficially in West's *Federal Supplement*. There are unofficial reports other than those of West Publishing Company, but you are unlikely to have to work with them.

Typically there are official and unofficial versions of State reports. The official version is published under the auspices of the individual States, while West publishes the unofficial version as part of its National Reporter System. Because West is faster than most States and because the National Reporter System incorporates the West key number system (to be discussed later) into its reports, the West version is generally preferred to the official report and has, in fact, been adopted by about ten States as their official report.

## FINDING TOOLS

The fact that a legal researcher has access to a complete set of reported decisions does not get him appreciably nearer to the solutions of his legal problem. Recall that a reporter is nothing more than a volume of reported cases bound in an order which approximates the chronological order in which the decisions were announced. How is a researcher to find cases relevant to his particular fact situation? It is apparent that tools are needed, which categorize decided cases as codes categorize statutes.

### Digests

To impose some order on the more than three million reported decisions, digests were developed. Cases are classified according to legal topics and are arranged alphabetically by topic. A one-sentence summary of the point of law, known as a squib, is given in the digest along with the citation to the case, so that the researcher can read the entire opinion of cases that appear from their squibs to be promising.

The most comprehensive digest is West Publishing Company's *American Digest System*. West has divided American Law into about 425 general topics, each of which is then subdivided into smaller subtopics. These subtopics are then identified by key numbers. Under this key number are collected all cases reported in the West reporter system relative to the particular point of law. Figure 3-1 is a sample page from the *West Digest* showing key numbers and citing applicable cases.

Following the initial digest which covered cases up through 1896, digests have been issued for ten-year periods–thus the name Decennial Digests. In 1967, the *General Digest, Fourth Series*, began digesting cases and will continue to do so until 1976. Then a new Decennial will be issued, and a new *General Digest* will begin to collect cases for the period 1977-1986.

*Tedrow's Digest*, authored by R. L. Tedrow, Chief Commissioner, U.S. Court of Military Appeals (retired), contains annotations and digests covering all published opinions of the COMA. Opinions are assigned one or more of the 196 main headings employed by the digest. This volume is kept current by the issuance of

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annual cumulative supplements in pocket-part form.

Other digests published by the West Publishing Company include the *Federal Digest* and the *Modern Federal Practice Digest*. The *Federal Digest* covers federal case law from the earliest cases until 1939. The *Modern Federal Practice Digest* covers the "modern era," from 1939 forward. Both of these digests are classified under the key number system. The *Modern Federal Practice Digest* is kept up to date by cumulative annual pocket supplements and pamphlet supplements. Replacement volumes are then issued for existing volumes and their supplements.

### Encyclopedias

A second source of cases is legal encyclopedias. Insofar as encyclopedias purport to state the law, they are of dubious value in that they tend to over-generalize dangerously. The researcher may, however, find the footnote citations in encyclopedias a source of cases from which he will branch out by use of digests or a citator.

### Citators

Citators are used, not as an initial source of cases, but rather to determine the history or status of a legal concept announced in a particular case. *Shepard's Citations*, the most comprehensive and widely used system of citators, allows the researcher to accomplish four ends:

- To trace the judicial history of each reported case, including proceedings following the cited decision.
- To verify the current status of each reported case so as to determine whether it is still effective law, or has been modified or overruled.
- To find later cases which have cited the main case.
- To find citations in periodical articles and attorney general opinions, et cetera.

Pamphlets are quite regularly issued by Shepard to reflect most recent developments. The information in these pamphlets is then reprinted in bound volumes. Figure 3-2 shows a typical entry from *Shepard's*. Explanations of symbols have been added to illustrate their use.

### Words and Phrases

One final case-finder is *Words and Phrases*, still another brainchild of West Publishing Company. It is a 46-volume alphabetical arrangement of thousands of legally significant words and phrases. Each word or phrase is followed by a squib and a citation to the decision from which the definition was taken. Annual pocket parts are issued to keep *Words and Phrases* up-to-date.

## SECONDARY SOURCES

Secondary sources may be defined as those legal materials which are not in any way binding, although they may be persuasive, upon the courts. Included, among others, are treatises, periodicals, and restatements.

### Treatises

Treatises run the gamut from the most scholarly treatment of a particular legal subject to practice guides which make no pretense to scholarly analysis. Depending upon where they fit into this spectrum, they may be divided into the following groups:

1. Scholarly surveys of particular fields in depth (e.g., *Scott on Trusts*).
2. Hornbooks, student texts, and treatise abridgements (e.g., *Prosser on Torts*).
3. Practitioners' handbooks in particular fields.
4. Procedural manuals (e.g., *Goodrich-Amram Standard Pennsylvania Practice*).
5. Specialized monographs on more or less narrow topics.
6. Comprehensive commentaries, histories, and works of jurisprudence (e.g., *Pound's Jurisprudence*).

The greatest danger involved in the use of treatises is one of currency. A survey that is one day definitive in a given subject area may become quickly obsolete unless revised to reflect changes in the area.

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### Restatements

Restatements are the result of the efforts of the American Law Institute, which set out 30 years ago to "present an orderly restatement of the general common law of the United States, including in that term not only the law developed solely by judicial decision, but also law that has grown from the application by the courts of statutes that were generally enacted and were in force for many years."

There are restatements for nearly all the important fields of the law. The explanatory comments and illustrative examples should not be over-looked by the user of restatements.

### Periodicals

Periodicals are issued by law schools, bar associations, private publishers, or just about anybody else who has something to say and the money to pay for its publication. As you might guess, the quality varies from the first-rate scholarship of the best law school law reviews to the hack work of some special interest groups. In addition to the periodic indices issued for the individual publications, there are a number of periodical indices, most useful of which is the *Index to Legal Periodicals*.

## THE MILITARY LAW LIBRARY

Within the larger framework of general legal research, there are a few special quirks about research of military law. Statutory material can, of course, be found in *Statutes at Large* and the *U.S. Code*. For your purposes, however, the UCMJ, given as Appendix 2 of the *Manual for Courts-Martial*, and references in the *JAG Manual* will generally be adequate.

Reports of military cases are found in one of two reporters:

(1) *Court-Martial Reports* which contains *all* decisions of the United States Court of Military Appeals and those opinions of the courts of military review of the three services which have been *selected* for their accurate statement of the applicable law.

(2) *Decisions of the United States Court of Military Appeals* which contains only decisions of the USCMA.

Up until 1967 there was a digest of *CMR* opinions in very much the same form as West's digests. Since that time, however, a method that is a hybrid of the *Words and Phrases* and the digest methods has been employed. Each volume of *CMR* contains a detailed index which refers the researcher to specific cases illustrating particular points of law. See figure 3-3. The integrated indexes of volumes 1-25 of *CMR* are bound in one hardbound volume. Indexes for subsequent volumes of *CMR* are integrated for five-year periods and bound in paperback volumes.

If a researcher wants to check all possible *CMR* cases, he must check the hardback index for volumes 1-25, the paperback indexes for volumes 26-30, 31-35, 36-40, and 41-45, and the individual indexes of volumes issued after 45 until the paperback indexes covering subsequent five-volume blocks are issued. Because there may be a lag of up to one year between the time a decision is announced and its publication in *CMR*, the thorough researcher must also check the advance sheets of opinions that have not yet been published in *CMR* to ensure that there have been no changes since the last volume of *CMR* was published. The office of JAG publishes the *USCMA Opinion Finder* that can be used to locate USCMA opinions not yet indexed in the bound volumes. Indexes similar to those of *CMR* are found in the back of individual volumes of *USCMA* but there are no integrated indexes and it is usually simpler to use the integrated indexes of *CMR* rather than to check every volume of *USCMA*.

There is a listing of citations in the front of each volume of *CMR* that is comparable to *Shepard's*. See figure 3-4. You must check each volume of *CMR*, however, after a particular decision is announced to determine if it has been cited, overruled, or otherwise limited in its application.

The extent to which you will be called upon to use secondary materials is a function of the size of your law library. Two publications of particular interest to Navy practitioners are worth noting at this point. They are the *JAG Journal*, a quarterly periodical published by the

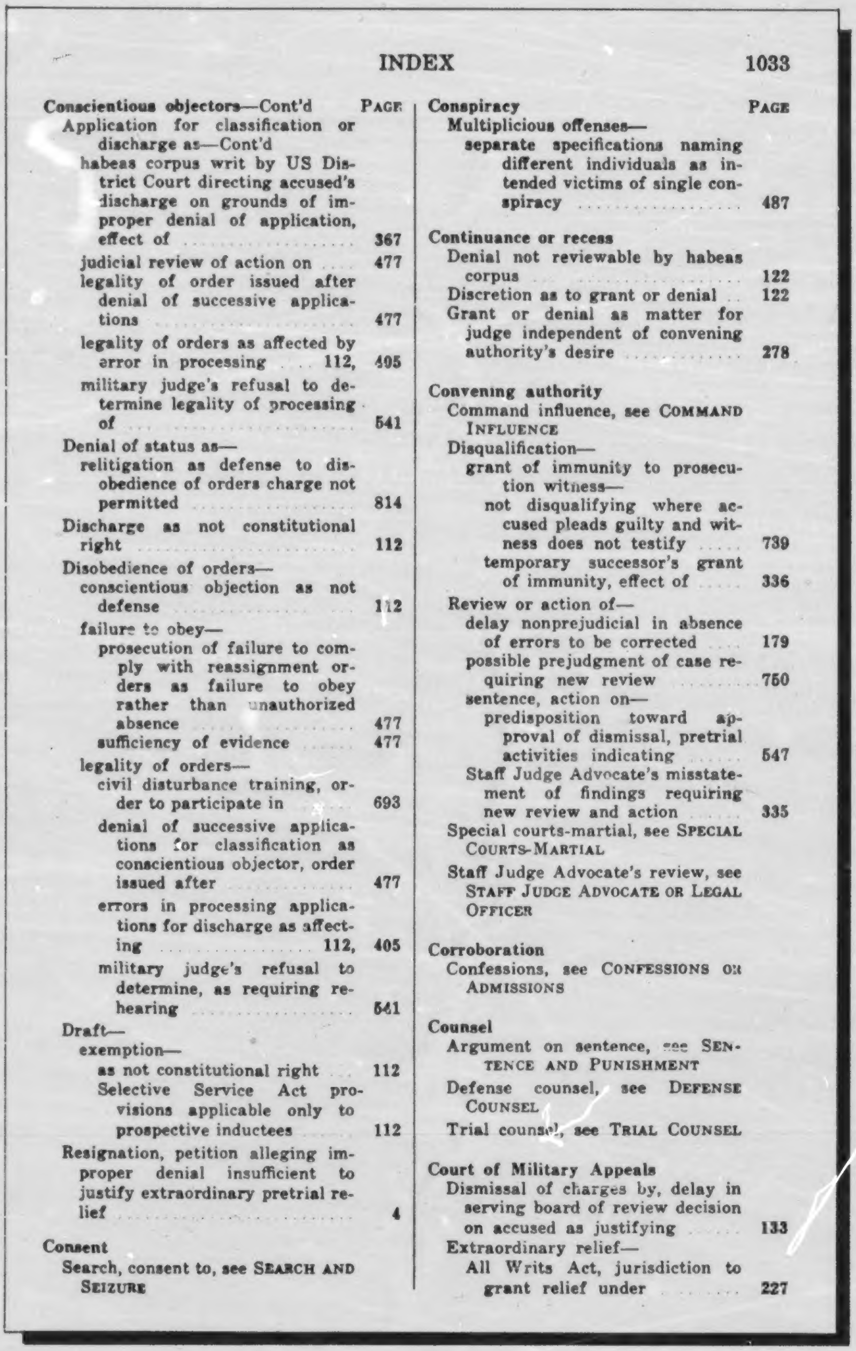

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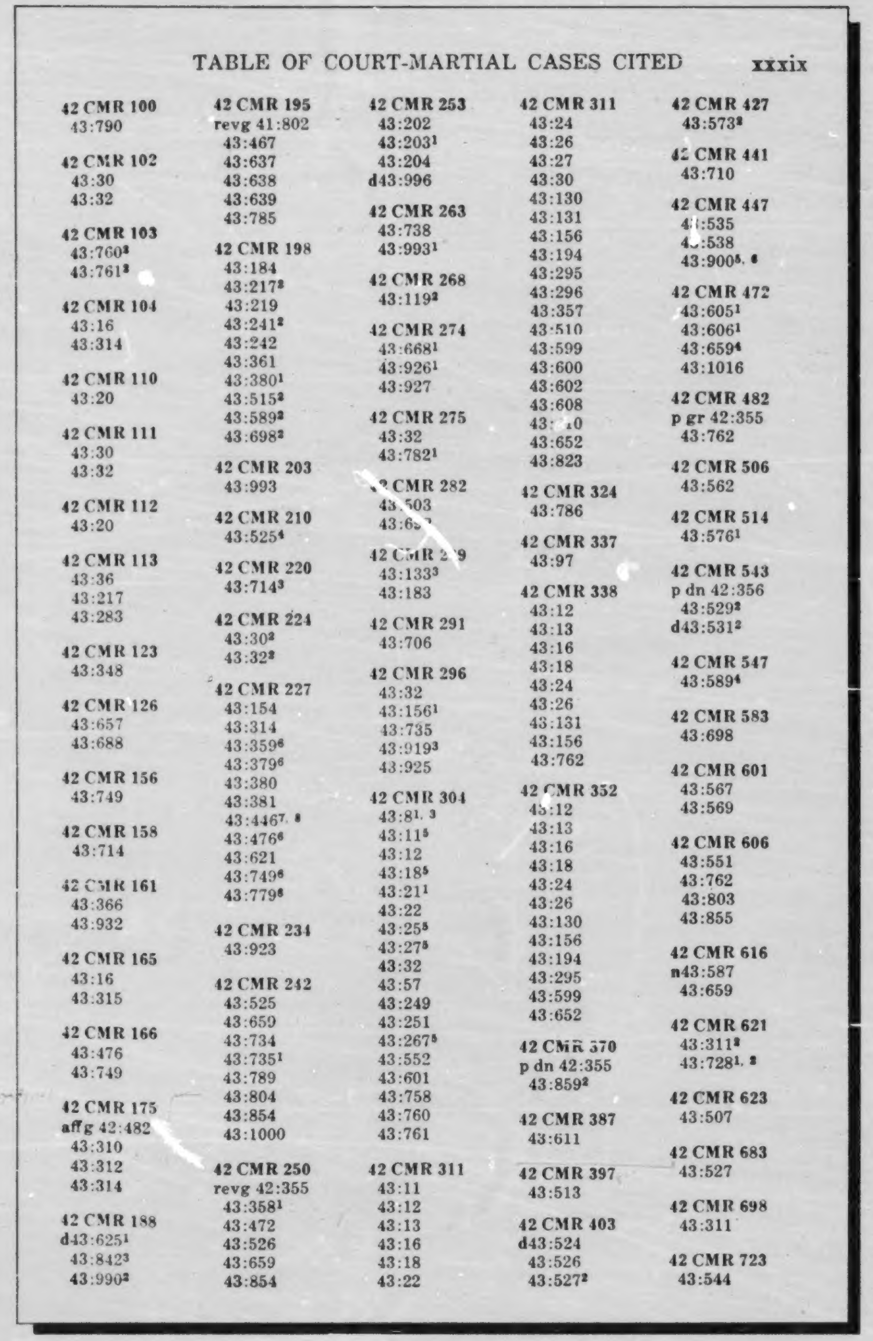
**Figure 3-3.—Sample Index Page from CMR.**



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43:131
43:156
43:762

**42 CMR 352**
43:12
43:13
43:16
43:18
43:24
43:26
43:130
43:156
43:194
43:295
43:599
43:652

**42 CMR 370**
p dn 42:355
43:859[2]

**42 CMR 387**
43:611

**42 CMR 397**
43:513

**42 CMR 403**
d43:524
43:526
43:527[2]

**42 CMR 427**
43:573[2]

**42 CMR 441**
43:710

**42 CMR 447**
43:535
43:538
43:900[5, 6]

**42 CMR 472**
43:605[1]
43:606[1]
43:659[4]
43:1016

**42 CMR 482**
p gr 42:355
43:762

**42 CMR 506**
43:562

**42 CMR 514**
43:576[1]

**42 CMR 543**
p dn 42:356
43:529[2]
d43:531[2]

**42 CMR 547**
43:589[4]

**42 CMR 583**
43:698

**42 CMR 601**
43:567
43:569

**42 CMR 606**
43:551
43:762
43:803
43:855

**42 CMR 616**
n43:587
43:659

**42 CMR 621**
43:311[2]
43:728[1, 2]

**42 CMR 623**
43:507

**42 CMR 683**
43:527

**42 CMR 698**
43:311

**42 CMR 723**
43:544

192.8

Figure 3-4.—CMR Citations.

Office of the Judge Advocate General of the Navy, and Volume 2 of *Military Law Reporter* published in looseleaf form by Public Law Education Institute. Other publications which should prove useful are the *Military Law Review* (Army) and the *U.S. Air Force JAG Law Review*.

## CITING TO SOURCES

A standard scheme for citing legal sources has been developed and is published as *A Uniform System of Citation* (USOC) by the Harvard Law School Association. The Navy has officially adopted this scheme, but because it does not deal exhaustively with military law, supplementary guidelines for citation have been issued by the Office of the Judge Advocate General.

Although the combined system may at times seem needlessly complicated and arbitrary, it has the virtue of identifying precisely to the reader the exact reference intended by the drafter of legal material.

You, as Legalman, will not need to know the citations for specific references. Rather you will need to be able to translate a citation to an exact page or pages in a source document and to construct correct citations so that a reader can quickly find source materials to which reference is made in legal writing.

*USOC* prescribes methods for printed material. Most of the Navy's legal correspondence is, however, prepared on typewriters. Where *USOC* prescribes large and small capitals, italics are used in typed material. If your typewriter does not have an italics capability, underscore the words to be italicized. In most instances, the majority of citations will appear in the text rather than in footnotes. If a citation follows a sentence, it is not isolated in any way; it is treated as just another "sentence." If it is inserted within a sentence, it is set off with parentheses.

To become a true expert you will need to refer to *USOC* and the JAG supplementary material. The discussion which follows is intended to acquaint you with the correct solution to most routine citation problems.

### STATUTES

Federal statutes are ordinarily cited to the *U.S. Code*. As of 1 January 1972 twenty titles have been enacted into law. For these titles, the official cite is to the *U.S. Code*; e.g., 10 U.S.C. §501 (1970). For all other titles, the language of *Statutes at Large* is authoritative. However, in practice reference is always made to the *U.S. Code*. If the *Statutes at Large* volume is unavailable (typically, a very recent enactment for which only the slip law has been published), the public law number is used; e.g., Pub. L. No. 89-320, §1 (Feb. 11, 1965). State statutes are cited to the latest official code. If the statute has not yet appeared in the official code or if there is no official code, you should cite to the preferred unofficial code; e.g., *Mass. Gen. Laws* ch. 41, §95 (1932) or to the published session laws of the state which are the state's equivalent to the *U.S. Statutes at Large*.

### COURT DECISIONS

Cases should be cited by name as they appear at the beginning of the opinion in the official report. You should cite to both the official reporter *and* the regional (West) reporter and give the year of the decision and the court rendering the decision. Citations to State court decisions are presumed to be to the highest court of the States unless some other court is named in the citation. Where a slip opinion is cited (typically, before the case has been published in either official or unofficial reports), the docket number, the court of record, and the date of decision are given. If the case is a military case give the date as day, month, and year. For all other cases use month, day, and year. Where applicable, the prior and subsequent history of a case should be given. For this purpose, *USOC* contains a list of abbreviations which are italicized when used; *e.g.*, Barbs v. Panjian, 340 U.S. 128, *reversing* 180 F.2d 662 (6th Cir. 1950).

### OTHER PERIODICALS

Treatises are cited by volume (if more than one); author; title; page, section, or paragraph; edition (if more than one have appeared); and date. *E.g.*, 1 *F. Pollock & F. Maitland, The History of English Law* 518 (2d ed. 1898). Journals and periodicals which are paginated consecutively throughout a volume are cited by volume number, abbreviated title of periodical (see *USOC*), page, and year. Titles and authors of articles are cited in regular roman; e.g., Chafee, Equitable Servitudes on Chattels, 41 Harv. L. Rev. 945 (1928).

## SIGNALS

Since authorities are cited for many varied purposes, a system of "signals" has been developed to show the reader the purpose for which a cite is being given. For example, while a case squarely in point with the present case needs no signal, a case in which the dictum is contrary to the present case needs a signal to show the reader this difference. A signal governs all successive string citations until a new signal is given or the "sentence" ends. The following is a list of signals selected from the complete list given in *USOC*:

a. Accord: Cited authority directly supports the statement although the factual context is different.
b. Contra: Cited authority contains a holding contrary to the present holding, even though facts may be different.
c. See: Cited authority contains basic source material in support of present holding.
d. But see: Cited authority suggests a position contrary to the present position.

## EXAMPLE CITATIONS

| SOURCE | CITE AS: |
|---|---|
| *Constitution of the United States* | *U.S. Const.* art. 1, sec. 8, cl. 14<br>*U.S. Const.* amend. V |
| Federal statutes: | |
| sections enacted into *U.S. Code* | 14. U.S.C. §3 (1970) |
| statutes at large | 71 Stat. 311 (June 30, 1950) |
| slip laws | Pub. L. 90-632, §1 (Feb. 16, 1968) |
| *Articles of War* | *AW* 65 |
| *Uniform Code of Military Justice* | UCMJ, art. 23(a)(1) |
| State Statutes | *Cal. Agric. Code* §351 (West 1954) |
| Cases: | |
| Supreme Court of U.S. | Morissette v. United States, 342 U.S. 246 (1952) |
| U.S. Courts of Appeals | Schiter v. King, 113 F.2d 238 (8th Cir. 1943) |
| District Courts | Jones v. United States, 220 F. Supp. 102 (S.D. Cal. 1955) |
| USCMA | United States v. Derks, 6 USCMA 287, 20 CMR 3 (1955) |
| Intermediate Navy Courts reported | United States v. Jones, 39 CMR 908 (NBR 1968) |
| unreported | United States v. Jones, No. 99-999 (NCMR 31 Dec. 1969) |
| State | Jones v. Smith, 373 Pa. 652, 97 A.2d 59 (1953) |
| *U.S. Navy Regulations* | Navy Regs, art. 0455.1(c) ( 1973) |
| *Manual of the Judge Advocate General* | JAGMAN, §0101a(1) |
| *Bureau of Naval Personnel Manual* | BUPERSMAN 3860280 |
| Navy JAG opinions | Op JAGN 1955/279 (11 Jan. 1955)<br>or<br>JAG:II:1:WBM:msc (9 Apr. 1956) |

## MAINTAINING A LIBRARY

Relevant considerations in maintaining a law library do not differ appreciably from those applicable to the maintaining of any other technical library—it must be kept up to date and the volumes should be kept on suitable shelves so that the user can see what is available to him. There are, however, a few variables that are peculiar to a law library.

## CURRENCY

In addition to the standard systems of maintenance that you're accustomed to in keeping your Navy publications up to date, you'll be dealing with half-a-dozen publishers with half-a-dozen different schemes. Some will use variations of the looseleaf method. Others will issue cumulative supplements called pocket parts that are inserted in the back of existing volumes, or issue new volumes which become part of an on-going series. It is your duty to learn each publisher's methods and to use them so as to keep your library current in all respects.

## KEEPING TRACK OF BOOKS

Your other major concern will be in keeping track of the books. There are no prescribed procedures, and you are free to develop any system that lets you know what books are a part of your collection and who has temporarily removed books from the library. One system which would work well is to use check-out cards like the ones that are customarily found in library books. This system would require that book pockets and charge-out cards be inserted in the volumes in the library and in new or additional volumes as they are received. A user could check out a volume by signing the charge-out card. No elaborate system for filing the charge-out cards is deemed necessary since you probably won't have many volumes charged out at any given time. A simple file box with alphabetical tabs should suffice as a repository for the charge-out cards until the volume is returned. Then the card should be inserted in the book pocket in the volume and the volume returned to its proper place in the library.

It is apparent that the complexity of the procedure utilized must be governed by the size of your collection. Aboard ship you'll have only a few volumes, and the books will rarely be removed from the legal office. There a very informal system will suffice. At an ashore law center, however, you will have a much more extensive collection and will need a more sophisticated check-out procedure to keep tabs on books as they are used in various offices. Your objective should be to come up with a scheme tailored to your particular circumstances which lets you know the status of your collection while occupying a minimum amount of your time and placing the least inconvenience in the path of the researcher.

## CHAPTER 4

# LEGAL REPORTING

One of your most important duties as a Legalman is the recording and transcribing of various types of court and other proceedings. The most common types of proceedings with which you will be involved are general and special courts-martial, Article 32 (Pretrial) Investigations, Courts of Inquiry, other JAG Manual Investigations, and the taking of depositions. While these proceedings normally are recorded verbatim (i.e., word for word), a verbatim transcript may or may not be required. However, this is a matter which will be dictated by the circumstances of the case at hand and the direction of the authority convening the proceeding. As a Legalman, you should expect to devote a considerable amount of your time to reporting duties.

In this chapter we shall take a look at how reporters are detailed, their general duties, and the reporting requirements of the above mentioned types of proceedings. We shall also discuss the recording equipment and methods which may be used, and some helpful suggestions and hints which should aid you in your reporting duties.

## REPORTERS AND THEIR DUTIES

Your first official notice that you are the reporter for a specific case will come from the convening authority, most likely by way of the trial counsel or the Staff Judge Advocate. Further information concerning detailing of reporters and their duties is contained in the following paragraphs.

### DETAILING OF REPORTERS

Convening orders for courts-martial normally do not contain any information concerning detailing of reporters. This information, however, may be and usually is specified in orders convening courts of inquiry and other fact-finding bodies. The convening authority (officer or official who orders the proceedings) derives his power and authority to detail reporters from Article 28, UCMJ, which states in part ***"Art. 28. Detail or employment of reporters *** Under such regulations as the Secretary concerned may prescribe, the convening authority of a court-martial, military commission, or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court or commission ***." Reporters are normally administratively detailed to individual cases.

### GENERAL DUTIES OF REPORTER

The general duties of the reporter are outlined in subparagraph 49b of the *Manual for Courts-Martial, United States,* 1969 (Revised edition) (MCM), which states in part ***"b. Duties. (1) General *** He shall record the proceedings of and testimony taken before courts-martial, courts of inquiry, or military commissions for which he is detailed or employed *** and may do this in the first instance in longhand, shorthand, or by mechanical or electronic means *** "

## OATHS

Normally the court reporter performs his duties under oath, in which he swears "*** to faithfully perform the duties of reporter to this court so help me God." In the case of reporting courts-martial, the court reporter may take the one time oath prescribed under Section 0111d of the *JAG Manual*. In the case of courts of inquiry and other fact-finding bodies, the reporter must specifically take the oath prescribed under Section 0415a of the *JAG Manual*.

## VERBATIM REPORTING

Actually, the term "verbatim reporting" may be misleading. You must understand that you should always record the proceedings verbatim. There will, of course, be instances where you will know beforehand that a verbatim transcript of the proceedings will not be required, such as a general or special court-martial case where a punitive discharge is precluded by the "Table of Maximum Punishments" (and not affecting a flag or general officer). Good reporting technique, however, dictates that all proceedings be recorded verbatim. There is always the possibility that the convening authority may desire a verbatim transcript even though such a transcript would not otherwise be required. Obviously, you cannot prepare a verbatim transcript unless you have previously recorded the proceedings word for word. Also, there are certain portions of a summarized record which should be transcribed verbatim. See Appendix II, pages 420 and 425 through 427 for examples.

The one most important thing you should always keep in mind when you are detailed as reporter for any military court or commission is that it is your job to "get it all down." If the speaker is talking too fast and you can't get down all he is saying, you should stop the proceedings and make this fact known to the military judge or other presiding officer. No doubt, you will experience situations in which you must stop the proceedings or miss getting something down. Some of the more common reasons for stopping the proceedings are:

- witness talking too fast;
- witness talking too low (inaudible);
- two or more persons talking at the same time;
- recording device malfunction; or
- other circumstances such as loud noises (aircraft going overhead, et cetera), which interfere with your hearing and recording what has been said or what has transpired.

You should not hesitate to ask anyone to repeat a statement or a question. You are only complying with your oath to "*** faithfully perform the duties of reporter to this court so help me God." If someone speaks too rapidly for you to record what he is saying, tactfully break in immediately (the statement "One moment, please" is normally used for this purpose) and ask the presiding officer to direct the individual to slow down and repeat, if necessary. The only purpose in having someone record the trial is to have an accurate account of all that is said and done in the courtroom. You can't depend on memory to "patch-up" afterwards, and those taking part in the proceedings have no right to expect you to, no matter what their function. It would be wise for you to familiarize yourself with the faces, ranks, and names of court members and all participants so that you can properly identify them if they speak during open sessions of the court. Remember, everything must be recorded and go into the record—even your stopping the proceedings—so continue to record while you relate your difficulty to the presiding officer and corrective action is taken.

Another thing which you should be aware of is that, although not considered by the court as evidence, any remarks or testimony ordered to be stricken from the record or disregarded must nevertheless be fully recorded.

While the oaths that you, other court personnel, and the members of the court, as well as the witnesses take are recorded verbatim, they are not transcribed into the record of trial. Standard stock entries (SSE) are used to show that appropriate oaths were given and sworn to. Examples of some of these SSE's are given later in this chapter and in Appendixes I and II.

While our discussion in the preceding paragraphs relates primarily to reporting techniques used in court-martial proceedings, these same techniques apply to other types of proceedings as well, insofar as actual recording is concerned.

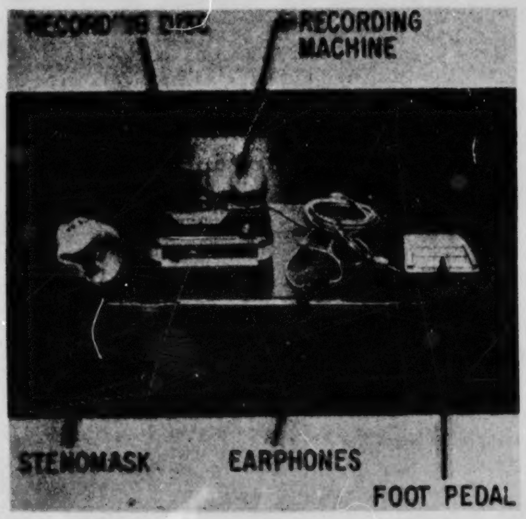
The main difference is, of course, the form in which the record is transcribed and produced. For court-martial cases you would follow the format prescribed in the *MCM* and use the appropriate "kit," i.e., DD-490 or DD-491 for verbatim or summarized records, as appropriate; for courts of inquiry and formal boards of investigation, you should use the format prescribed in Appendix 4 of the *JAG Manual;* and for other types of proceedings, you would follow appropriate regulations pertaining to them or as otherwise directed. Refer to Chapters 11 and 12 for discussions of administrative discharge proceedings and fact-finding bodies, respectively.

## RECORDING EQUIPMENT AND METHODS

As previously stated, you may record the proceedings by longhand, shorthand, or mechanical or electronic means. As a practical matter, however, recording by longhand would be unduly slow and cumbersome and must not be used except as a last resort when none of the other, more effective, means of recording is available.

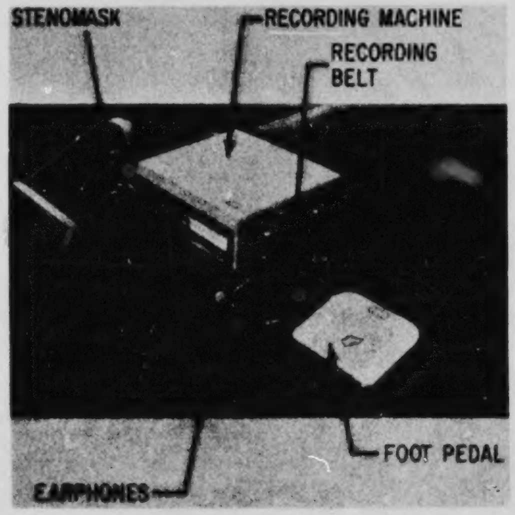
The chief advantage to be gained from using mechanical or electronic means of recording is speed. Obviously, a tape recorder is capable of recording as fast as the pace of the proceedings demands. However, there are drawbacks to using a tape recorder, such as your not being able to prefix the speakers, the stages of examination, and so forth. Also, if two or more people speak at the same time, you may have trouble transcribing the tape. You also cannot "ad lib" comments onto the tape concerning events taking place in the courtroom. While none of these problems is insurmountable, use of the stenomask (with either Gray-Audograph or other type recording machine adapted for use with the stenomask) eliminates them, enabling you to obtain an all-around better record.

Pictured in figures 4-1 through 4-3 are some of the types of recording equipment currently in use by the Navy. Figure 4-1 depicts the "Gray-Audograph" which is widely used throughout the Navy. However, since this machine is no longer being manufactured, repair parts and servicing may become a serious problem.

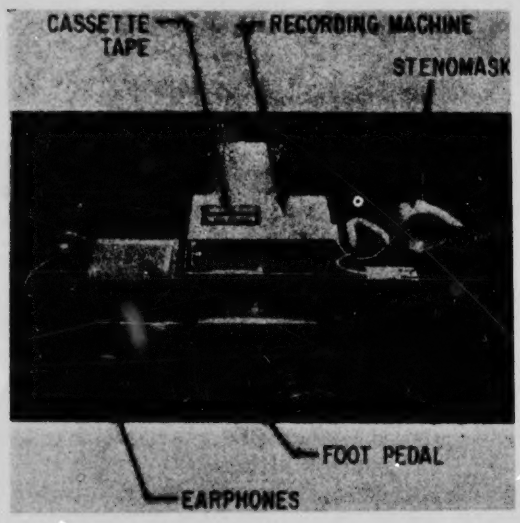


192.9
**Figure 4-1.—Gray-Audograph Stenomask Machine.**

Figures 4-2 and 4-3 depict more modern and up-to-date recording equipment which has been adapted for use with the stenomask and is becoming available on the market. Figure 4-2 shows an IBM machine which utilizes a magnetic tape belt for recording. Figure 4-3 is a Lanier-Edisonette machine which utilizes a cassette



192.10
**Figure 4-2.—"IBM" Court Reporting Equipment.**



192.11

Figure 4-3.—"Lanier-Edisonette" Court Reporting Equipment.

tape for recording. At the time of this writing, the IBM machine is being used at the Naval Justice School for court reporter training, although other brands are being tested. The Justice School has done considerable research and testing on several different machines. If your command is contemplating purchasing court reporting equipment, it is recommended that the Naval Justice School be contacted for information on the latest and most efficient equipment available. Figures 4-4 and 4-5 contain general information on the proper use and maintenance of the stenomask. Nomenclature is also discussed. Adherence to the directions given will ensure your stenomask is properly maintained and ready for use.

If you are proficient at shorthand, this is a perfectly good method to use. You should have a sufficient supply of sharp pencils and note pads on hand if you use this method. Use of the stenotype machine is also an excellent method if you are qualified to use it.

As you can see, you actually have quite a bit of latitude in the manner in which you may record the proceedings. You may use either, or a combination of, systems at once; e.g., the stenomask as the primary system with a tape recorder as a back-up system. If you use a tape recorder as the primary means, it should be in good condition and you should have a sufficient number of microphones strategically located in the courtroom to be sure of getting all the proceedings down.

The important thing is not so much the method you use or prefer but the results of that method. Remember, it's *your* job to make an accurate record of everything significant which occurs during the proceedings.

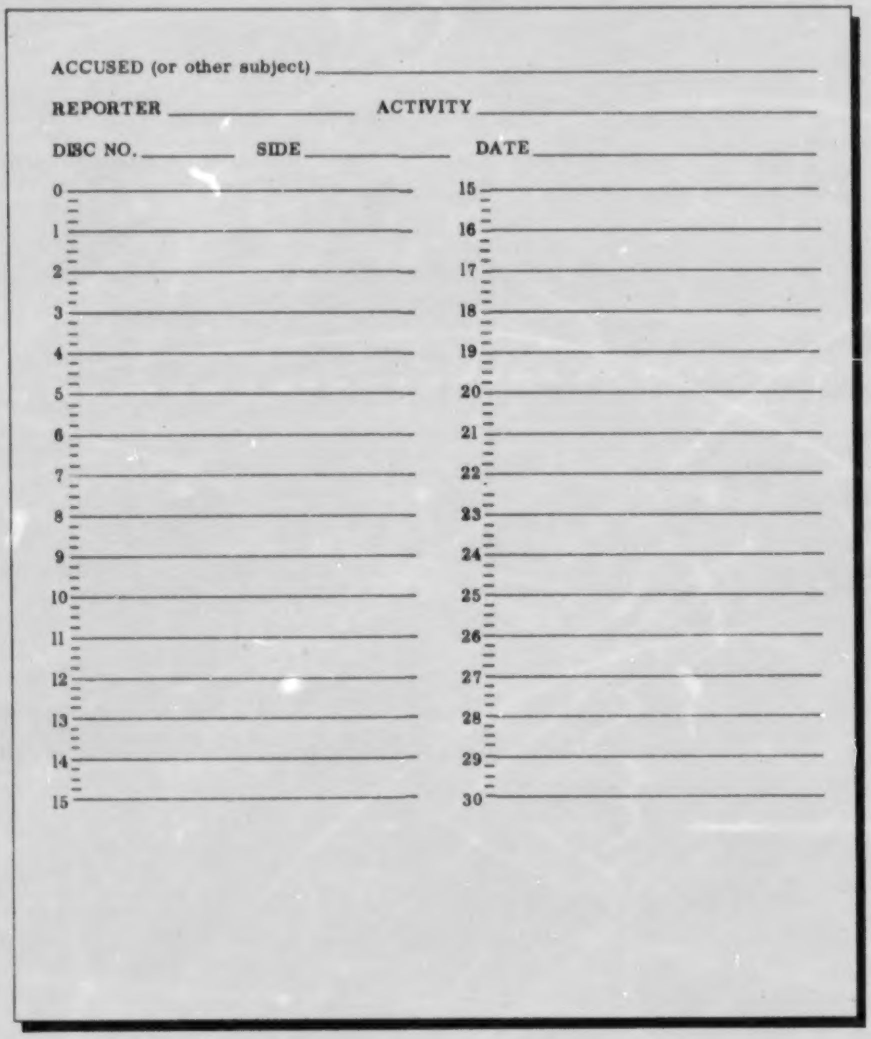
## REPORTER'S LOGS

During the proceedings of a special or general court-martial, you, as reporter, are responsible not only for recording verbatim the proceedings of the court but also for noting in the record such things as the stages of examination, times of opening, recessing, closing, and adjournment of the court, and the marking of exhibits.

The reporter's logs (see figures 4-6, 4-7, and 4-8) can be a great aid to you both during and after the court. The log shown in figure 4-6 is designed for use with the Gray-Audograph Stenomask Machine but may be adapted for use with other methods of recording. The numbers in the two vertical columns represent minutes of recording, broken down to 15 second intervals, on the disc or belt (record) being used on the machine. The stenomask machine has a similar scale in minutes so that you can key your comments on your log with the place the item concerned is recorded on your disc or belt. For instance, if an objection is made by the defense at 10 minutes on your disc or belt, you simply check the 10 minute space on your log and note the objection in the space provided to the right of the 10 minute scale. It is particularly important to note the time (in minutes of recording) that objections are made during trial. This is true for a very good reason: you may be asked for a "read back." It is not unusual for counsel to argue for several minutes on the pros and cons of objections made. It is also not unusual for the military judge or president of the court to ask the reporter for a "read back," to refresh his memory of the statement or question which prompted the objection. By now you should see the value of noting the objection on your log. If you have properly utilized your reporter's log, you will be able to "scan" back on your disc or

PAGES 59-60 OF THIS DOCUMENT WERE REMOVED PRIOR TO ITS BEING SUBMITTED TO THE ERIC DOCUMENT REPRODUCTION SERVICE BECAUSE THEY WOULD NOT REPRODUCE IN MICROFICHE.

65/66



ACCUSED (or other subject) ______________________

REPORTER ____________ ACTIVITY ______________

DISC NO. ______ SIDE ________ DATE ____________

0 ______________
1 ______________
2 ______________
3 ______________
4 ______________
5 ______________
6 ______________
7 ______________
8 ______________
9 ______________
10 ______________
11 ______________
12 ______________
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192.14

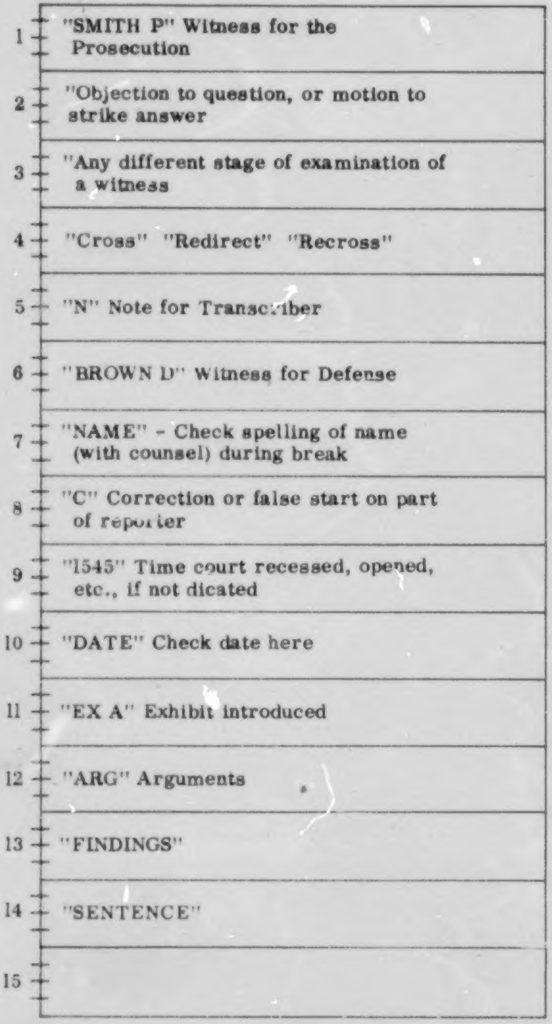
Figure 4-6.—Reporter's Log.

belt to the area where this statement or question is recorded and give the "read back" quickly. Without such a log, it could take you several minutes to find this area on your disc or belt resulting in inconvenience to the court and embarrassment to you.

Your log can also be important to the transcriber of the disc or belt (if other than you) by alerting him to such things as false starts, corrections, and other notes before he begins transcribing the record, thus enabling him to transcribe correctly without having to back up and correct previously transcribed items.

## EXHIBIT LOG

An exhibit log is really nothing more than a list showing the number of exhibits admitted in



1 "SMITH P" Witness for the Prosecution

2 "Objection to question, or motion to strike answer

3 "Any different stage of examination of a witness

4 "Cross" "Redirect" "Recross"

5 "N" Note for Transcriber

6 "BROWN D" Witness for Defense

7 "NAME" - Check spelling of name (with counsel) during break

8 "C" Correction or false start on part of reporter

9 "1545" Time court recessed, opened, etc., if not dicated

10 "DATE" Check date here

11 "EX A" Exhibit introduced

12 "ARG" Arguments

13 "FINDINGS"

14 "SENTENCE"

15

192.15

**Figure 4-7.—Examples of Items Recorded on Reporter's Log.**

evidence or otherwise presented for inclusion in the record. Figure 4-8 is an example of a typical exhibit log.

Whether you, as reporter, will be entirely responsible for taking custody of trial exhibits and attaching appropriate copies, photographs, or descriptions to the record or merely assisting the TC in this task is a matter you should discuss with the TC prior to trial. In any event, you must keep an accurate record of the exhibits received in evidence and that is the purpose of using an exhibit log.

## GENERAL RECORD INFORMATION AND REPORTING TIPS

In the following paragraphs you will find some tips to help you produce records of trial which will be consistent and uniform in format. General information on such items as margins, page numbering, abbreviations, grammar, and punctuation, is also included. Taking a few minutes now to familiarize yourself with these basic rules will save you much time in the future and at the same time enable you to turn out a finished product ready for immediate review. The following information relates primarily to GCM's and SPCM's. Preparation of summary court-martial (SCM) records is discussed later in this chapter.

### MARGINS

The left margin of your record of trial should be 1 inch (10 pica or 12 elite spaces). The right margin should be set 1/2 inch from the side of the page (5 pica or 6 elite spaces). The top margin on all pages should be 2 1/2 inches (15 lines) to allow room for binding with acco fastners. The bottom margin on all pages should end as close to 1 inch (but not more than 2 inches) from the bottom of the page as possible. If the typed text ends more than 2 inches from the bottom of the page, as when it has been necessary to insert an additional partial page of testimony, a diagonal line must be drawn from the left margin, starting immediately under the last line of typing to the right margin 1/2 inch from the bottom of the page. The reason for this is so that reviewing authorities will know that nothing has been inadvertently omitted from the record. You should also indent 2 spaces from the left margin for each prefix; i.e., TC, DC, PRES, ACCUSED, WITNESS, Q., A. The second and subsequent lines should be typed flush with the left margin. Examples are as follows:

. TC: I object to the last question of the defense on the ground that it calls for an opinion on the part of the witness.

EXHIBITS

| PROSECUTION: | DEFENSE: | APPELLATE: |
|---|---|---|
| 1 | A | 1 |
| 2 | B | 2 |
| 3 | C | 3 |
| 4 | D | 4 |
| 5 | E | 5 |
| 6 | F | 6 |
| 7 | G | 7 |
| 8 | H | 8 |
| 9 | I | 9 |

192.16

Figure 4-8.–Exhibit Log.

Q. Could you please relate, to the members of the court, the circumstances surrounding the burglary on the evening in question?

Refer to Appendixes I and II for additional examples.

## NUMBERING PAGES

Pages should be numbered in the center of the page 1/2 inch (3 lines) from the bottom of the page. If, during the course of transcribing the record, you accidently skip a page number, or duplicate a page number, the error may be corrected as follows:

SKIPPED PAGE NUMBER–For example, numbers jump from 18 to 20, but nothing has been omitted from the transcript (see Appendix I, pages 399 and 400.)

18
There is no page 19
Next page 20

NUMBER DUPLICATED OR EXTRA PAGE TO BE INSERTED–Use the preceding page number plus an "a" as in "19a." (See Appendix I, pages 404 through 406.) At the bottom of the preceding page, type:

19
Next page 19a

On the inserted page, type:

19a
Next page 20

## ABBREVIATIONS

The following abbreviations are authorized for use in transcribing records of trial. You should keep in mind that the first four of these abbreviations are to be used only as prefixes to statements and are not to be used in the text or when transcribing gestures or motions. The last five may be used in the text of the record:

TC: – Trial Counsel
DC: – Defense Counsel
PRES: – President
MJ: – Military Judge
Mr. – Mister
Ms. – Miss/Mistress
U.S. – United States
USS – United States Ship
Dr. – Doctor

## PUNCTUATION

You have previously studied punctuation as a Yeoman. Certain rules are covered here because you have greater need to be familiar with them in legal work than in typing correspondence.

### The Apostrophe (')

The apostrophe is used to form contractions; to form possessives of nouns (but not of pronouns); as a single quotation mark; to express feet and minutes; and to form the exclamation mark (unless your typewriter has an exclamation mark on its keyboard). The plurals of letters and of numbers are formed by adding 's. Within a word the apostrophe is written without spaces. Examples: It's not true that the company reported its change of policy. Boys' and girls' camps are advertised in this month's issue. *NR's* require that in appropriate cases accident reports be prepared.

### The Question Mark (?)

Two spaces must follow a question mark which appears at the end of a sentence. In the rare instances in which the question mark appears within a sentence, only one space is left after the question mark. Examples: Q. Can he do it? or anyone? Q. What was the percentage of interest you paid?

### Parentheses ( () )

No spaces should be left between parentheses and the matter enclosed. In the event the parenthetical matter appears in the middle of a sentence, one space should be left before the opening parenthesis mark and one space after the closing parenthesis mark. Example: Q. What did you see? A. About this far (gesturing) from the hammer, on the upper side of ***.

### The Quotation Marks ("")

The period and the comma should always be placed inside the closing quotation marks. The semicolon and the colon should always be placed outside the closing quotation marks. The question mark and the exclamation mark must be placed outside the closing quotation marks if the marks punctuate the entire sentence. They must be placed inside the closing quotation marks if they punctuate the quoted material only. Examples: As I was saying, "Seeing is believing." Did you see the sign, "Off Limits"? He asked me, "What is the punishment for shooting a man with a pistol?" All he said was, "What an awful mess!"

### The Single Quotation Mark (' ')

The single quotation mark is used when enclosing a quotation within a quotation. Example: He answered, "I am not willing positively to say, 'Private Ellwood is the guilty one.' "

### End Spacing

The rules concerning end spacing are as follows: Two spaces must follow all end punctuation marks, and 2 spaces must follow the colon.

### Numbers

When writing whole numbers, the numbers one through ten must be spelled out except when used in conjunction with other numbers in a series (e.g., 1, 2, 12, 25, and 50); as a measurement (e.g., 1 inch); time (e.g., 2 P.M.); decimals (e.g., 1.25); age (e.g., 6 years old); or as a percentage (e.g., 2%). At the beginning of a sentence, numbers must be spelled out (e.g., Five years ago), except in Questions and Answers (Q. and A.) when time, money, percentage, serial numbers, and so forth, are concerned. In such cases the numerals should be used. Dates should be shown as they were spoken in court, (e.g., 1 June 1973 or 1st of June 1973). Where monetary values are concerned and the money is a specific amount, you should always use numerals. If the amount is referred to in a general way, you should always use words instead of figures. Examples: Q. How much money was in the valise? A. About a million dollars. Q. Exactly how much? A. $1,055,000.00.

When writing fractions and whole numbers, the fractions should be transcribed by separating figures with a slant (/). Examples: 1/4, 1/2, 1/3, 5/8, 2 7/8, 3 3/[illegible]. You should not use the fractions that appear on the typewriter keyboard. The reason for this is so that your fractions will be typed consistently throughout the record, since most typewriters have only the 1/4 and 1/2 fractions on the keyboard. An exception to this rule would be when the military judge or president of the court gives his instructions, closes to vote on the findings and sentence, and states "three-fourths (or two-thirds) of the members present at the time the vote was taken concurring ***." You should type these fractions using words (e.g., three-fourths, two-thirds).

## IDENTIFICATION OF SPEAKERS

If you use the closed microphone court reporting (stenomask) system, shorthand, or a mechanical means of court reporting, the following prefixes are recommended to shorten the time involved in identifying speakers, but yet allowing for a positive method of identification:

| COURT-MARTIAL PARTICIPANT | ORAL (SPOKEN) | TYPED |
|---|---|---|
| Military Judge | JUDGE | MJ: |
| President (speaking as presiding officer) | PREZ | PRES: |
| Court Member | MEMBER<br>LT DOE | MEMBER<br>(LT DOE): |
| Trial Counsel (Prosecution) | PROS | TC: |
| Defense Counsel (Defense) | DEF | DC: |
| Witness (when speaking but not answering a question on examination) | WITNESS | WITNESS: |
| Accused (when speaking but not answering a question on examination as a witness on his own behalf) | ACCUSED | ACCUSED: |

## SLIPS OF THE TONGUE, FALSE STARTS, ETC.

The testimony of witnesses and the remarks of court personnel must be recorded and transcribed verbatim (in verbatim cases) including slips of the tongue, false starts, interruptions, and pauses. When the person speaking interrupts himself or pauses, you should use two hyphens to indicate. Example:

Q. What did he tell you?
A. Well, I–I'm not really certain.

When the person speaking is interrupted by another, you should use four hyphens. Example:

Q. What did the Commander tell you?
A. He told me that----
DC: I object. What the Commander said is hearsay.

## REPORTER'S REMARKS

Paragraph 49b of the *MCM*, in discussing the duties of the reporter, states in part *** "It is the duty of the reporter to include in the record everything *which is said or takes place* in open sessions, hearings out of the presence of the court members, and the reporter will omit no portion of these proceedings from the record." (Emphasis supplied). Such things as a witness pointing to the accused when identifying him, or any other motion or movement of personnel in the courtroom (other than spectators) must be recorded by the reporter. Reporting these reporter's remarks is called "ad-libbing." Your remarks should be enclosed in parentheses to show that it is a reporter's remark or ad-lib. Such things as the swearing, opening, closing, recessing, adjourning of the court, or the calling and excusing of witnesses are reported by the use of standard stock entries (SSE). Notations by the reporter that are required to be enclosed in parentheses should commence, if possible, on the same line, or on the next immediate line; e.g., "A. (Pointing in the direction of the accused) That's him over there." Other reporter notations, where parentheses are not required, should be inserted 2 lines below the preceding line and must be indented 2 spaces from the left margin. Example:

Lieutenant (junior grade) O'Brien, the challenged member, withdrew from the courtroom.

## STANDARD STOCK ENTRIES

Mention has been made earlier of standard stock entries (SSE) used for routine required items of information. The types of information covered by such entries is discussed below, with examples. These entries are also noted as "SSE" in Appendixes I and II for your ease in identifying them.

### Opening and Closing of Court

The reporter is responsible for noting the time the court opens, recesses, closes, and adjourns. Note that the record must reflect the time (expressed in hours and minutes) and the date of each opening, closing, recess, and adjournment of the court. After the court "closes" it thereafter "opens." After the court "recesses" or "adjourns" it thereafter is "called to order." The following SSE should be used for this purpose:

The court closed at 0915 hours, 15 November 1973.
The court opened at 0930 hours, 15 November 1973.

The court recessed at 0915 hours, 15 November 1973.
The court was called to order at 0930 hours, 15 November 1973.

The court adjourned at 0915 hours, 15 November 1973.
The court was called to order at 0930 hours, 15 November 1973.

### Calling Witnesses

The record must reflect the fact that a witness was called or recalled by either the prosecution, the defense, or the court. The reporter must record the witness' name, and if a military person, his rank or grade, and armed force. Examples:

Corporal Robert M. Johnson, U.S. Marine Corps, was called as a witness for the prosecution, was sworn, and testified as follows:

Yeoman Second Class Harold C. Black, U.S. Coast Guard, was called as a witness for the defense, was sworn, and testified as follows:

Lieutenant (junior grade) Charles S. Smith, U.S. Navy, was called as a witness for the court, was sworn, and testified as follows:

Paul Y. Miller, civilian, was called as a witness for the defense, was sworn, and testified as follows:

Airman First Class Charles E. Sloan, U.S. Air Force, was recalled as a witness for the court, was reminded that he was still under oath, and testified as follows:

### Stages of Examination

The reporter must record and transcribe the proper stage of examination during the proceedings. The stages of examination usually take place in the following order: Direct examination, cross-examination, redirect examination, recross-examination, and examination by the court.

When transcribing the record, the stage of examination should be typed in capital letters and centered on the page, 2 lines below the SSE calling the witness or after the previous stage of examination. The reporter must also identify the examiner. The following SSE's should be used to accomplish this:

Questions by the prosecution:
Questions by the defense:
Questions by the military judge:
Questions by the president: (In an SPCM without a military judge).
Questions by a court member (CWO BROWN):

The following example shows where and how the stage of examination and the identity of the examiner should appear in the record:

### DIRECT EXAMINATION

Questions by the prosecution:

Q. State your full name****
A. Robert Quade Lewis****

A brief method for recording the stages of examination, the party conducting the examination, and the first question he will ask is shown below. Note that a witness called for the defense is initially examined by the prosecution. This examination is normally limited to establishing the identity of the witness and whether he knows the accused in the case. The defense then conducts the actual *direct examination* of its witness. The prosecution would conduct a *cross-examination* of a defense witness. The brief method in box at bottom of page should be used for recording the above information.

### MARKING EXHIBITS

Another one of your duties during the proceeding will be to mark the exhibits received in evidence. Prosecution exhibits must be marked in the following manner:

Prosecution Exhibit 1 for identification (insert consecutive arabic numerals for each succeeding exhibit admitted). Page 395 of Appendix 1 illustrates the manner in which prosecution exhibits should be marked.

Exhibits for the defense must be marked as follows:

Defense Exhibit A for identification (insert consecutive capital letter, e.g., A, B, C for each succeeding exhibit admitted). Defense exhibits are transcribed in the record in the same manner as prosecution exhibits, except they are lettered (A, B, C, etc.), instead of numbered.

Appellate exhibits are marked with arabic numerals as "Appellate Exhibit 1," et cetera.

After an exhibit is admitted in evidence, it will be your responsibility to delete the words "for identification." You do this when directed by the military judge or president during the proceedings. Remember that, if copies or true descriptions must be substituted for original evidence received during the trial, the authenticity of the copies or descriptions must be attested to, usually by the trial counsel. Examples:

A true copy. Attest:

O. S. ANDERSON
LT, JAGC, USN
Trial Counsel

A true description. Attest:

B. R. DOUGLAS
LT, JAGC, USN
Trial Counsel

A true photograph. Attest:

P. R. CHERNEFF
LT, JAGC, USN
Trial Counsel

| PROSECUTION WITNESS | DEFENSE WITNESS | COURT WITNESS |
|---|---|---|
| DIRECT – PROS – Q | DIRECT – PROS – Q | DIRECT – PROS – Q |
| CROSS – DEF – Q | DEF – Q | (JUDGE) (PREZ) – Q |
| REDIRECT – PROS – Q | CROSS – PROS – Q | CROSS – PROS – Q<br>or<br>CROSS – DEF – Q |
| RECROSS – DEF – Q | REDIRECT – DEF – Q | |
| COURT EXAM – (JUDGE) (PREZ) – Q | RECROSS – PROS – Q | |
| | COURT EXAM – (JUDGE) (PREZ) – Q | |

Real evidence must be identified in the same manner as documentary exhibits but identifying markings are placed on a tag and attached to the exhibit.

## SAMPLE PLEAS AND FINDINGS

Shown below is the manner in which the accused's pleas and the findings of the court should be transcribed in the record. Remember, these are only samples. The pleas and findings must be recorded and transcribed verbatim *exactly* as stated by the defense or accused or as announced by the presiding officer. Refer to page 388 of Appendix I.

### Pleas

*Sample plea of Not guilty—one Charge, one Specification:*

To the Specification and the Charge: Not guilty.

or

To the Specification of the Charge: Not guilty.
To the Charge: Not guilty.

*Many specifications and charges; but plea to all consistent:*

To all Specifications and Charges: Not guilty.

*One Charge and two Specifications:*

To Specification 1 of the Charge: Guilty.
To Specification 2 of the Charge: Not guilty.
To the Charge: Guilty.

*Two Charges, one with one Specification and one with two Specifications:*

To the Specification, Charge I: Not guilty.
To Charge I: Not guilty.

To Specification 1 of Charge II: Guilty.
To Specification 2 of Charge II: Not guilty.
To Charge II: Guilty.

*Guilty with exceptions and substitutions—(Charged with larceny but pleading to the Lesser Included Offense (LIO)—wrongful appropriation):*

To the Specification: Guilty, except the word "steal," substituting therefor the words "wrongfully appropriate"; to the excepted word, not guilty, to the substituted words, guilty.

To the Charge: Guilty.

*Sometimes the defense may plead:*

To all Charges and Specifications: Not guilty (or Guilty).

### Findings

*Sample finding of Guilty, one Charge and one Specification:*

Of the Specification of the Charge: Guilty.
Of the Charge: Guilty.

or

Of the Specification and the Charge: Guilty.

*Sample finding of Guilty, one Charge and two Specifications:*

Of Specification 1 of the Charge: Not guilty.
Of Specification 2 of the Charge: Guilty.
Of the Charge: Guilty.

*Sample finding, two charges—one guilty, one not guilty—one Specification under each charge:*

Of the Specification, Charge I: Guilty.
Of Charge I: Guilty.

| | |
|---|---|
| Of the Specification, Charge II: | Not guilty. |
| Of Charge II: | Not guilty. |

*Sample finding in case of two charges, two specifications under each charge, with the second specification under each charge found not guilty:*

| | |
|---|---|
| Of Specification 1 of Charge I: | Guilty. |
| Of Specification 2 of Charge I: | Not guilty. |
| Of Charge I: | Guilty. |
| Of Specification 1 of Charge II: | Guilty. |
| Of Specification 2 of Charge II: | Not guilty. |
| Of Charge II: | Guilty. |

*Sample finding in case of one charge with one specification thereunder, of which the court found the accused guilty with exceptions and substitutions:*

| | |
|---|---|
| Of the Specification of the Charge: | Guilty, except the words "in the nighttime burglariously break and enter" and "with intent to commit larceny therein," substituting therefor the words "unlawfully enter" and "with intent to commit a criminal offense, to wit: Willfully damage military property therein"; of the excepted words, not guilty, of the substituted words, guilty. |
| Of the Charge: | Not guilty, but guilty of a Violation of Article 130. |

*Sample finding where there are several charges and specifications thereunder and the finding of the court is guilty to all of the charges and specifications:*

| | |
|---|---|
| Of all Specifications and Charges: | Guilty. |

In the event three charges and specifications were deliberated upon by the court, and the finding of the court was guilty as to the first and third charge with their specifications, but not guilty to the second charge and its specification, the following is the manner in which the findings should be recorded:

| | |
|---|---|
| Of Charges I and III and the Specifications thereunder: | Guilty. |
| Of Charge II and the Specification thereunder: | Not guilty. |

In the event five charges were referred to trial and a motion for a finding of not guilty was sustained as to Charge II, the convening authority withdraws Charge IV after arraignment, the accused pleads guilty to Charge I and the court found the accused guilty of Charge III and its specifications, but not guilty of Charge V and the specifications thereunder, the findings would be set out as follows:

| | |
|---|---|
| Of Charges I and III and the Specifications thereunder: | Guilty. |
| Of Charge V and the Specifications thereunder: | Not guilty. |

No mention should be made in the findings as to withdrawn charges or charges upon which a determination of not guilty has previously been made by the court.

In an appropriate case, where the accused is found not guilty of all charges and specifications, or of the charge and specification, amounting to an acquittal, the findings need not be indented or blocked, but should instead appear as one continuous statement by the president as shown in the following example:

PRES: Jones, it is my duty as president of this court to advise you that the court in closed session and upon secret written ballot has found you not guilty of (the) (all) Specification(s) and Charge(s).

## RECORDS OF TRIAL AND CONTENTS (GENERAL AND SPECIAL COURTS-MARTIAL)

The final format of the trial record is dictated by the *MCM* and supplemental regulations issued by the SECNAV(JAG). Making sure the record is correct and complete is one of your greatest responsibilities as a court reporter.

## TYPES

There are two types of trial records. These are verbatim and summarized records. Verbatim records are required in all GCM's involving a punitive discharge, a flag or general officer, or any sentence greater than can be adjudged by an SPCM. A verbatim record is also required in all SPCM's which adjudge a bad-conduct discharge (BCD).

Summarized records may be used only in an SPCM which does not adjudge a BCD or in GCM's other than as described above. Appendixes I and II are examples of verbatim and summarized records of trial, respectively. They show numerous examples of how SSE's are used in preparation of the record as well as examples of other items previously discussed. You should refer to these appendixes frequently, noting in particular the information contained in the boxes on many of the pages, and the general arrangement of the record.

## COPIES AND DISTRIBUTION

In GCM or SPCM cases involving a general or flag officer, death, dismissal, a dishonorable discharge (DD), a BCD, or confinement at hard labor (CHL) for one year or more, an original and two copies of the record must be forwarded to the convening authority (CA) for initial review. See page 379 of Appendix I. The CA does not retain any of these records but must forward them all for further review. The CA and the supervisory authority (SA) may require additional copies of the record for their files. You should check their policy prior to forwarding the record of trial to ensure the right number of copies is provided. You must also prepare a copy of the record for delivery to each accused after it is authenticated.

## SECURITY CLASSIFICATION

Classification of a trial record is the trial counsel's (TC) responsibility. If the trial record contains classified matter, the TC must take appropriate action to have a security classification placed upon it in accordance with the *Department of the Navy Information Security Program Regulation* (OPNAVINST 5510.1 series). Classified matter should not be included in a record of trial whenever it can be avoided. Prior to delivery of a copy of a classified record to the accused, it must first be forwarded to the CA, who will cause all classified matter to be removed from it. A certificate indicating the page(s) removed or partially deleted and the exhibits removed is also prepared. The expurgated copy of the record along with the original of this certificate is then delivered to the accused. A copy of the certificate and a statement signed by the accused acknowledging receipt of the expurgated copy of the record (or a certificate of delivery) must be attached to the original record of trial.

## GENERAL CONTENT AND ARRANGEMENT

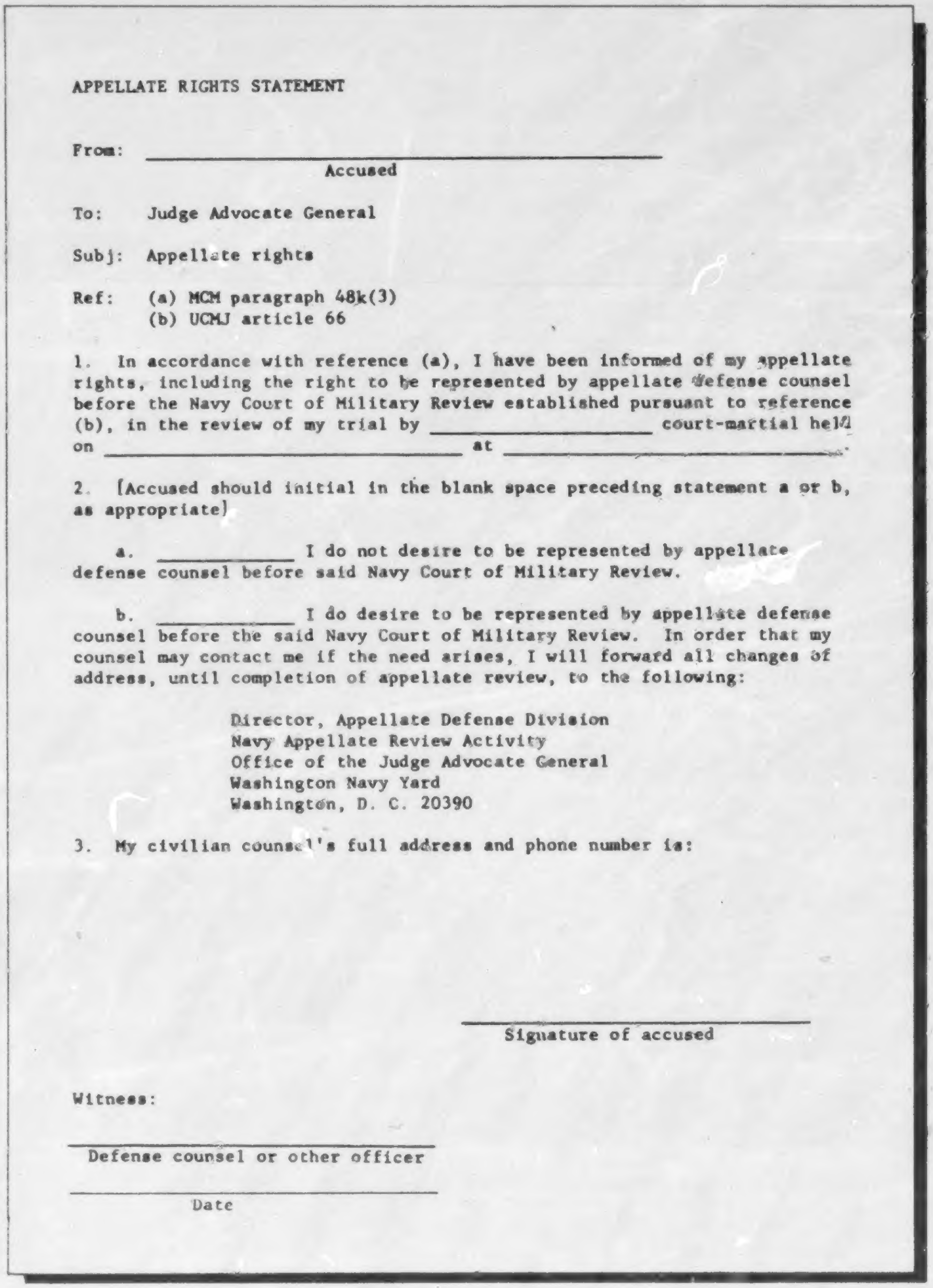
Trial records contain all or most of the following items, depending upon the type of court and the sentence adjudged, arranged from front to rear in the order listed. Refer to Appendixes I and II for sample verbatim and summarized records of trial:

- Front cover and chronology sheet–In verbatim records DD Form 490 is used and in summarized records DD Form 491 is used. The basic data of the case is recorded on the front cover. The chronology sheet is on the reverse side of the front cover. This form contains a brief history of the case–from the time of the accused's apprehension until completion of the appellate review–indicating the date on which each step is completed and the number of cumulative days which have elapsed up to and including the date of each step. In BCD cases NAVJAG Form 5813/1–Court-Martial Data Form–must be completed and included with the record. Refer to the *JAGMAN*, Section 0120 and *JAGMAN*, Appendix page A-1-g for instructions on the use and completion of this form.
- Request for appellate defense counsel–The Judge Advocate General must refer the record of every GCM or SPCM case to a Court of Military

Review (CMR) if the sentence, as approved, affects a general or flag officer, extends to death, dismissal, a DD, a BCD, or CHL for one year or more. In every case requiring review by a CMR, the accused has the right to be represented before the CMR by an appellate defense counsel, qualified under Article 27(b)(1), UCMJ, and provided by the government. Immediately after the trial the trial defense counsel must advise the accused generally of his appellate rights. After receiving this advice the accused is then requested to indicate in writing his desires as to appellate representation. See figure 4-9 for the format to be used in making the appellate rights statement.

- Briefs of counsel submitted after trial–The *MCM* places this item last in order. However, the 1 April 1970 revision of the record of trial "kits" (DD Forms 490 and 491) provides that these briefs precede the record of trial proper. An example of a "brief" would be a brief by the DC of such matters as he feels should be considered in behalf of the accused on review.
- Court-Martial Data Sheet–This sheet (DD Form 494) serves as a check-off list. Using it will help reveal errors or omissions in the trial record or in the court procedures themselves. In practice, this form is very seldom required and then only in a verbatim case. The DD-494 is not a check-off sheet for the reporter but is for use of the TC, CA (or his representative), SA's Staff Legal Officer (SLO), and JAG. In preparing the form, you, as the reporter, merely type in the heading entries on page 1 and the names (on page 3) of the TC and CA (or his representative). The officers using the form place an "X" in appropriate boxes, fill in the date, and sign the form themselves.
- Court-Martial Order (CMO)–This order promulgates the results of the trial. Preparation of CMO's is completely covered in Chapter 9 (Posttrial).
- Signed review of Staff Judge Advocate (SJA) or Legal Officer and clemency papers–A written review by an SJA or Staff Legal Officer (SLO) is required in all GCM's. A written review by a law specialist is required in SPCM's where the sentence includes a BCD. The original and one copy of the review must be placed in the original record of trial. A copy should be placed in each copy of the record. See SECNAVINST 5815.3 series for policy information relative to clemency. Include here all requests or recommendations for clemency.
- Charge Sheet–The original of the charge sheet is placed in the original record and copies are placed in all copies of the trial record. However, if reading of the charges is omitted in open court and the MJ announces that the charge sheet "will be inserted at this point in the record," then the charge sheet goes in the record of trial proper and not at this point.
- Congressional inquiries and replies thereto, if any.
- Pretrial Investigating (PTI) Officer's report, followed by any other papers which accompanied the charges when referred for trial, unless in the record of trial proper. In an SPCM, if a PTI was conducted, the report (DD-457) need only be filed with the file copy of the record of trial.
- Advice of Staff Judge Advocate or Legal Officer–Before the CA can refer a charge to trial by GCM, he must first refer it to his SJA or SLO for consideration and advice.
- Requests by counsel and action of the CA taken thereon (e.g., requests concerning delay, witnesses, and depositions).
- Records of former trials.
- Record of trial proper–Use DD Form 490 and 491, verbatim record and summarized record respectively, as appropriate. DD Form 491-1 is used to record Article 39(a) sessions in a summarized record. The record of trial proper should contain the below items in the order listed:

1. Index sheet and receipt of accused for copy of record, or certificate in lieu of receipt.
2. Record of proceedings in court, including Article 39(a) sessions, if any, at appropriate place in proceedings.
3. Authentication page.
4. Certificate of correction or proceedings in revision, if such a certificate is used or such proceedings are held.
5. Action of CA and, if appropriate, action of officer exercising GCM jurisdiction.
6. Exhibits admitted in evidence–The original of each exhibit must be placed in the original trial record except when the president or military judge has approved



APPELLATE RIGHTS STATEMENT

From: ______________________________
Accused

To: Judge Advocate General

Subj: Appellate rights

Ref: (a) MCM paragraph 48k(3)
(b) UCMJ article 66

1. In accordance with reference (a), I have been informed of my appellate rights, including the right to be represented by appellate defense counsel before the Navy Court of Military Review established pursuant to reference (b), in the review of my trial by ______________ court-martial held on ______________________ at ______________________.

2. [Accused should initial in the blank space preceding statement a or b, as appropriate]

a. __________ I do not desire to be represented by appellate defense counsel before said Navy Court of Military Review.

b. __________ I do desire to be represented by appellate defense counsel before the said Navy Court of Military Review. In order that my counsel may contact me if the need arises, I will forward all changes of address, until completion of appellate review, to the following:

Director, Appellate Defense Division
Navy Appellate Review Activity
Office of the Judge Advocate General
Washington Navy Yard
Washington, D. C. 20390

3. My civilian counsel's full address and phone number is:

______________________________
Signature of accused

Witness:

______________________________
Defense counsel or other officer

______________________________
Date

192.17

Figure 4-9.—Format for Appellate Rights Statement.

the substitution of a true copy, a true description, or a photograph of the exhibit.

7. Exhibits not received in evidence–The page of the record of trial where each exhibit was offered and rejected must be noted on the front of each exhibit not received in evidence.
8. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence (real or documentary), and briefs of counsel submitted at trial.

## AUTHENTICATION OF RECORD

The record of trial is authenticated to certify that it is a true account of the proceedings as they occurred in court. In GCM's and SPCM's the military judge (MJ) present at the end of the trial authenticates the record. If, by reason of death, disability, or absence, the MJ is unable to authenticate the record, the TC authenticates the record in lieu of the MJ. In the event the TC is unable to authenticate the record for the above reasons, then a member authenticates in lieu of him.

In a court-martial consisting of trial by the MJ alone, and the MJ and TC are both unable to authenticate the record for the above reasons, then the court reporter must authenticate the record of trial. In an SPCM without an MJ, the president authenticates unless unable because of death, disability, or absence, in which case the TC present at the end of the trial must authenticate the record. Again, if the TC is unable to authenticate the record for the above reasons, then a member must authenticate it.

If anyone other than the MJ (in cases where an MJ is detailed) or the president or TC (in cases without an MJ) authenticates, the reason(s) must be stated. See Appendix I, Page 407 and Page A9-4 of the *MCM* for further information on authenticating the record of trial.

When undue delay will not result, the defense counsel should be given an opportunity to examine the record of trial. His signature verifying that he has examined the record should appear on the same page as the authentication.

## CORRECTION OF RECORD

Prior to forwarding to the CA, minor errors or omissions in the record should be corrected with pen and ink and initialed by the TC. For correction of major errors, it may be necessary to retype the defective portion of the record.

After the record has been forwarded to the CA, the record may be corrected only by a certificate of correction or proceedings in revision, which are both discussed later in this chapter.

## SUMMARIZING TESTIMONY

In those cases not requiring a verbatim record, as discussed above, you prepare a summarized record of trial using the DD Form 491 kit. This kit contains most of the pages required for recording testimony or items which are required to be transcribed verbatim, such as Article 38(b) rights. If more space is needed to record testimony, you should use plain 8 X 13 inch continuation pages.

The fact that a summarized record of trial is to be prepared does not affect any of the procedures of the trial itself. As mentioned previously, you should record everything verbatim because several reasons could develop requiring a verbatim record although it might appear before trial that a summarized record would be sufficient.

Appendix II is an example of a summarized record of trial which incorporates the use of SSE's and other items previously covered in the text. Additionally, examples of summarized testimony are shown. See pages 429, 430, and 431 for examples of how testimony should be summarized.

## USE OF DD-491 KIT

The DD Form 491 kit (hereinafter referred to as "the kit") contains all the entries actually required, except those entries made necessary because of case law, et cetera. When using the kit, the reporter deletes the portions of entries that are not applicable to the case. The words "except as indicated below" appearing at the end of a preprinted entry need not be deleted, even though there are no exceptions to be set forth. When a statement in the kit ends in these words, leave the entry blank if there are no exceptions. If exceptions are stated during trial, then you simply include a summarized statement as to such exceptions. You should be watchful for the statements that do not end in the words "except as indicated below." Such statements will require the insertion of the word "None" in appropriate cases or completion of the entry with a summarized statement in answer to the entry.

## PLEAS

The pleas should be set forth verbatim as stated in court. If the accused pleads guilty, the ruling officer must explain to the accused the meaning and effect of his guilty plea. This explanation should include the elements of the offense, that the plea admits every element charged and every act or omission alleged and authorizes conviction without further proof. He must also advise the accused what the maximum authorized punishment that may be adjudged for the offense would be upon conviction. The record of trial must show that this was done. Therefore, it is recommended that this be set forth verbatim.

## PROSECUTION CASE

Testimony of witnesses must be set forth in summarized form in first person, present tense. Pages 428 through 430 of Appendix II illustrate examples of summarized testimony.

If no witnesses are called by the TC, the word "None" must be typed at this point in the record.

At the conclusion of the TC's case, you should insert the words "The prosecution rested." Page 430 Appendix II illustrates this entry.

## DEFENSE CASE

Again, testimony of witnesses is set forth in summarized form in first person, present tense. Refer to Appendix II.

If no witnesses are called by the defense, then the word "None" should be inserted in the record at this point.

If no evidence or testimony is presented by the accused, the record must so reflect. Page 431 of Appendix II illustrates the manner in which this should be recorded in the record.

The words "The defense rested" should appear at the conclusion of the DC's case.

## FINDINGS

The findings must be set forth verbatim as announced in court. Prior to announcing the findings, the ruling officer may state that all manuals and legal references or authorities were removed from the closed session of the court. If such a statement is made, the record should so indicate by the addition of an entry so stating. Page 432 of Appendix II illustrates such an entry.

## PERSONAL DATA CONCERNING ACCUSED

If any of the data concerning the accused are incorrect, such data must be noted and copied into the record along with the substance of the corrective action taken.

## PREVIOUS CONVICTIONS

The TC presents evidence of admissible previous convictions, if any. Inapplicable words in the kit must be deleted.

## MATTERS IN EXTENUATION AND MITIGATION

The ruling officer advises the accused that he may present any matters he desires in mitigation or extenuation, including unsworn statements. If any such matters are presented, they must be transcribed into the record in the chronological order in which presented. If testimony is presented, the same procedures are used as when testimony is taken from other witnesses.

## SENTENCE

Prior to closing the court, the ruling officer instructs the court on the maximum sentence which may be adjudged, and the record must so indicate. The ruling officer also instructs the court on any matters presented in extenuation and mitigation. It is recommended that these instructions be set forth verbatim. See pages 434 and 435 of Appendix II.

The sentence must be set forth verbatim as announced in court.

Again, prior to announcing the sentence, as prior to announcing the findings, the ruling officer may state that all manuals and legal authorities were removed from the closed session of the court. The addition of an entry to this effect should be made if such a statement is made by the ruling officer.

## RECESS OR ADJOURNMENT

SSE's must be used in the record for recording recesses or adjournment, or for accounting for parties to the trial. The entry you should use for this latter purpose is as follows:

> "All parties to the trial who were present when the court recessed were again present in court."

If a member fails to return from a recess of the court, the reason must be shown. After arraignment a member may be excused by the CA for good cause only.

A SSE is required for recording closings and openings of the court. No entry to show an accounting of parties to the trial need be made on opening of the court except when necessary to show the absence of a party after the court was in closed session. Again, the reason must be shown for a member's absence.

## AUTHENTICATION

A summarized record is authenticated in the same manner as a verbatim record and the DC signs below the signature of the authenticator that he has examined the record, but this is not a part of the authentication.

Appendix 10 of the *MCM* contains further information concerning the preparation of summarized records of trial and you should refer to it when using the kit and any questions concerning preparation of the record arise.

## RECORDING CONTEMPT PROCEEDINGS

What is "contempt" of court? Any willful disregard of the authority of a court or disobedience of its orders constitutes "contempt." Article 48, *UCMJ*, gives courts-martial the power to punish for the following contemptous acts: Menacing words, signs, or gestures and any disturbance of the court's proceedings by riot or disorder. These acts must occur in the presence of the court to be punished under Article 48, *UCMJ*. Any person, whether subject to the *UCMJ* or not (with the exception of the ruling officer or members of the court), including the accused, the TC, DC, reporter, witnesses, spectators, and even the CA may be punished for contempt.

There is no separate record of contempt proceedings. Normally, a contempt proceedings is a part of the record of the trial. If the court desires, however, the record of contempt proceedings may be transcribed separately so that it may be forwarded to the CA immediately for his action. Whether this is done or whether it is transcribed in the record of trial is a matter within the discretion of the ruling officer. See figure 4-10 for the recommended format to be used in recording contempt proceedings.

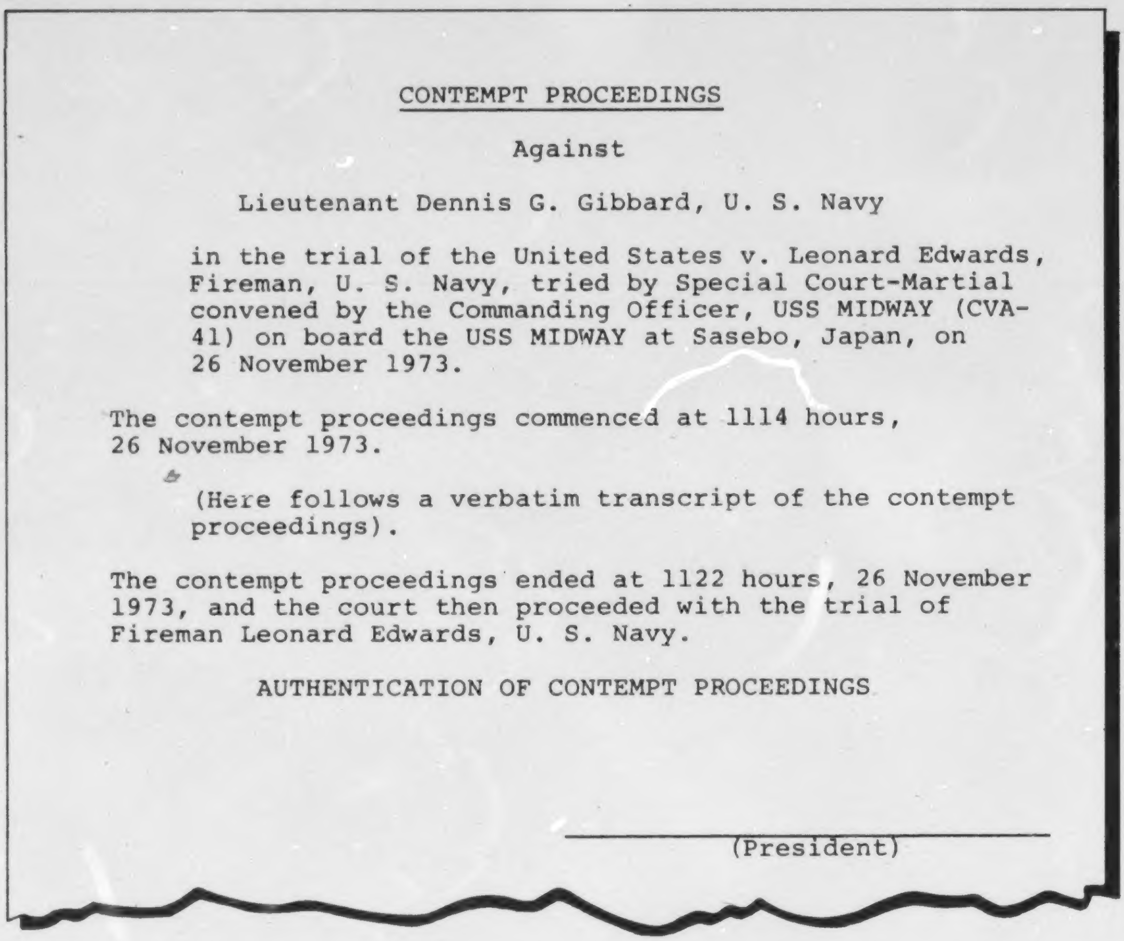
There is no appeal or review of contempt action other than an automatic review by the CA. If, on review, the CA is satisfied that a contempt occurred and that the punishment adjudged is appropriate, he may order the punishment executed. The CA may require the offender to serve any confinement adjudged pending formal review of the proceedings; he may reduce the punishment; and he may designate an appropriate place of confinement, if necessary.

The offender must be notified, in writing, of the holding and the punishment, and of the CA's action.

In order to be effective, the punishment adjudged for contempt must be approved by the CA.

## CERTIFICATE OF CORRECTION

A certificate of correction is a document which corrects an error or omission so that the



CONTEMPT PROCEEDINGS

Against

Lieutenant Dennis G. Gibbard, U. S. Navy

in the trial of the United States v. Leonard Edwards, Fireman, U. S. Navy, tried by Special Court-Martial convened by the Commanding Officer, USS MIDWAY (CVA-41) on board the USS MIDWAY at Sasebo, Japan, on 26 November 1973.

The contempt proceedings commenced at 1114 hours, 26 November 1973.

(Here follows a verbatim transcript of the contempt proceedings).

The contempt proceedings ended at 1122 hours, 26 November 1973, and the court then proceeded with the trial of Fireman Leonard Edwards, U. S. Navy.

AUTHENTICATION OF CONTEMPT PROCEEDINGS

______________________________
(President)

192.18

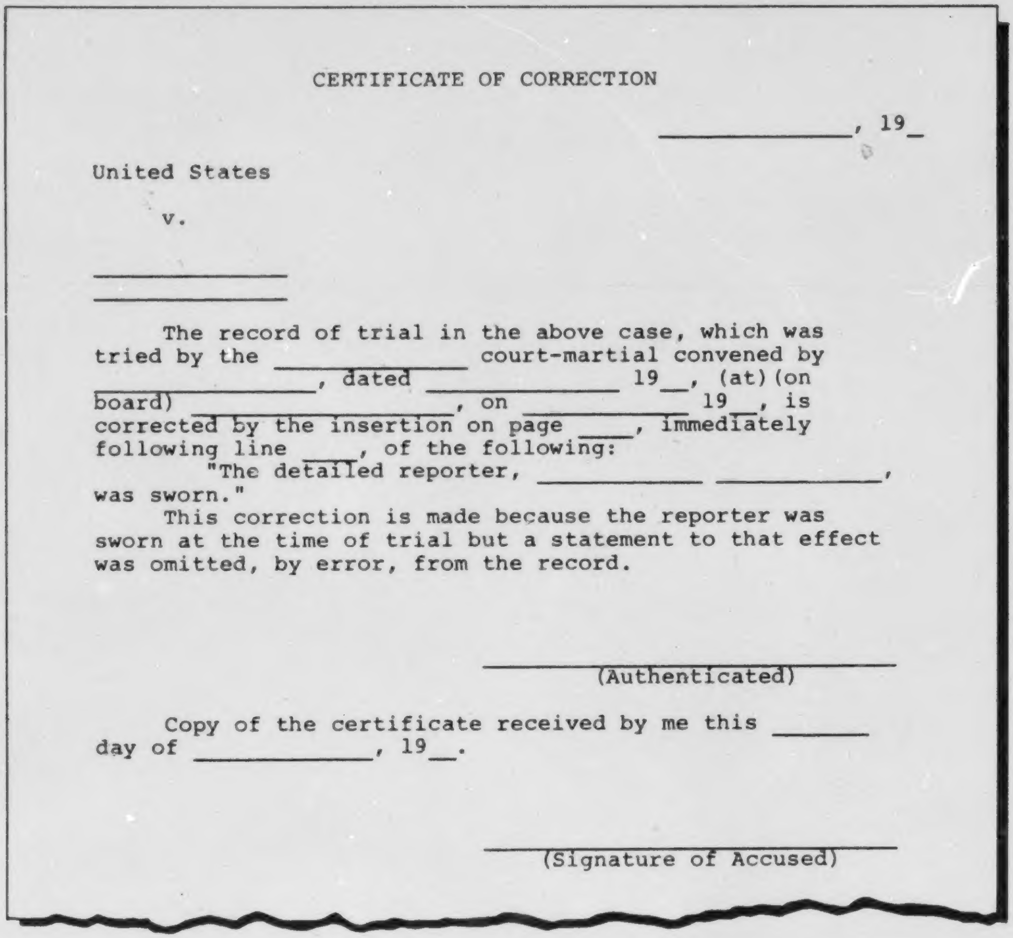
Figure 4-10.—Sample Format for Contempt Proceedings.

record of trial will reflect what actually occurred at the trial. Keep in mind that if the error or omission actually occurred at the trial, the record is correct as it stands and a certificate of correction must not be used.

The following is the normal course of action taken:

1. The CA returns the record to the MJ, president, or summary court-martial, as appropriate, with a memorandum indicating the defects to be corrected and directing that a certificate be prepared.

2. The trial counsel prepares the certificate. No erasures, additions, deletions, or other physical corrections are made in the record. The certificate is authenticated in the same manner as is the record of trial. A copy must be served on the accused who must receipt for it. The receipt is attached to the original record. The Certificate of Correction is included in the original record immediately following the au-



CERTIFICATE OF CORRECTION

______________, 19_

United States

v.

______________
______________

The record of trial in the above case, which was tried by the ____________ court-martial convened by ______________, dated ____________ 19__, (at)(on board) ________________, on ____________ 19__, is corrected by the insertion on page ____, immediately following line ____, of the following:

"The detailed reporter, ____________ ____________, was sworn."

This correction is made because the reporter was sworn at the time of trial but a statement to that effect was omitted, by error, from the record.

______________________________
(Authenticated)

Copy of the certificate received by me this ______ day of ____________, 19__.

______________________________
(Signature of Accused)

192.19

Figure 4-11.—Format for Certificate of Correction.

thentication page. See figure 4-11 for a sample format to be used for certificates of correction.

## PROCEEDINGS IN REVISION

Proceedings in revision are further proceedings by a court-martial to revise some action which has been determined to have been erroneous. These proceedings are used to correct defects in the findings and sentence of the court when there is an apparent error or omission in the record, or some improper or inconsistent action by the court, and such defect affects the findings and/or sentence and the defect can be corrected without material prejudice to the substantial rights of the accused. Some examples of defects curable by proceedings in revision are:

1. Inconsistent findings; e.g., guilty of the Specification, but not guilty of the Charge.
2. Incomplete findings; e.g., no findings as to any Specification or Charge.

Proceedings in revision cannot be used to reconsider a finding of not guilty or to increase the severity of the sentence, with the exception that the sentence may be revised to increase it when a more severe sentence is mandatory.

The normal steps to be followed in proceedings in revision are:

1. The CA returns the record to the TC with a letter pointing out the defects and directing proceedings in revision.
2. The court convenes. Only members who participated in the original findings and sentence may sit in proceedings in revision. Some members may be absent so long as a quorum is present. However, if the court which heard the case has already been disolved by an order, *there can be no proceedings in revision.* If necessary, the CA may detail a new MJ, TC, and DC who must be sworn during the proceedings in revision (unless previously sworn). If, however, an MJ alone adjudged the original findings and sentence, a new MJ may not be detailed to proceedings in revision.
3. The TC reads the CA's letter in open court and announces that it will be inserted in the record. The ruling officer then instructs the court, as necessary.
4. The court closes to reconsider the findings or sentence and cure the defect.
5. The court opens and announces its action. The court may revoke its former findings or sentence and announce a new finding or sentence; or it may adhere to its former findings and sentence.
6. The court then adjourns.

The record of proceedings in revision is prepared and authenticated in the same manner as the original trial record. Standard stock entries are used in recording openings, closings, calling court to order, adjournments, and so forth.

The original of the proceedings in revision is inserted in the original record of trial immediately following the authentication page, or certificate of correction, if used. Copies are placed in all copies of the record. A copy is served on the accused and his receipt is attached to the original record of the trial. The record is then returned to the CA for his action.

## SUMMARY COURTS-MARTIAL RECORDS

The record of trial by summary court-martial (SCM) consists of the completed page 4 of the charge sheet and a summary of any evidence presented during the trial, if the accused is found guilty by the SCM of any charge to which he entered a plea of not guilty. Figure 4-12 is an illustration of a record of trial by SCM (less the summary of evidence).

The summary of evidence considered by the SCM must be attached to the record only when the accused has entered a plea of not guilty to any charge and of which he was found guilty by the SCM.

Matters considered by an SCM in extenuation and mitigation must, in all cases, be summarized and attached to the record.

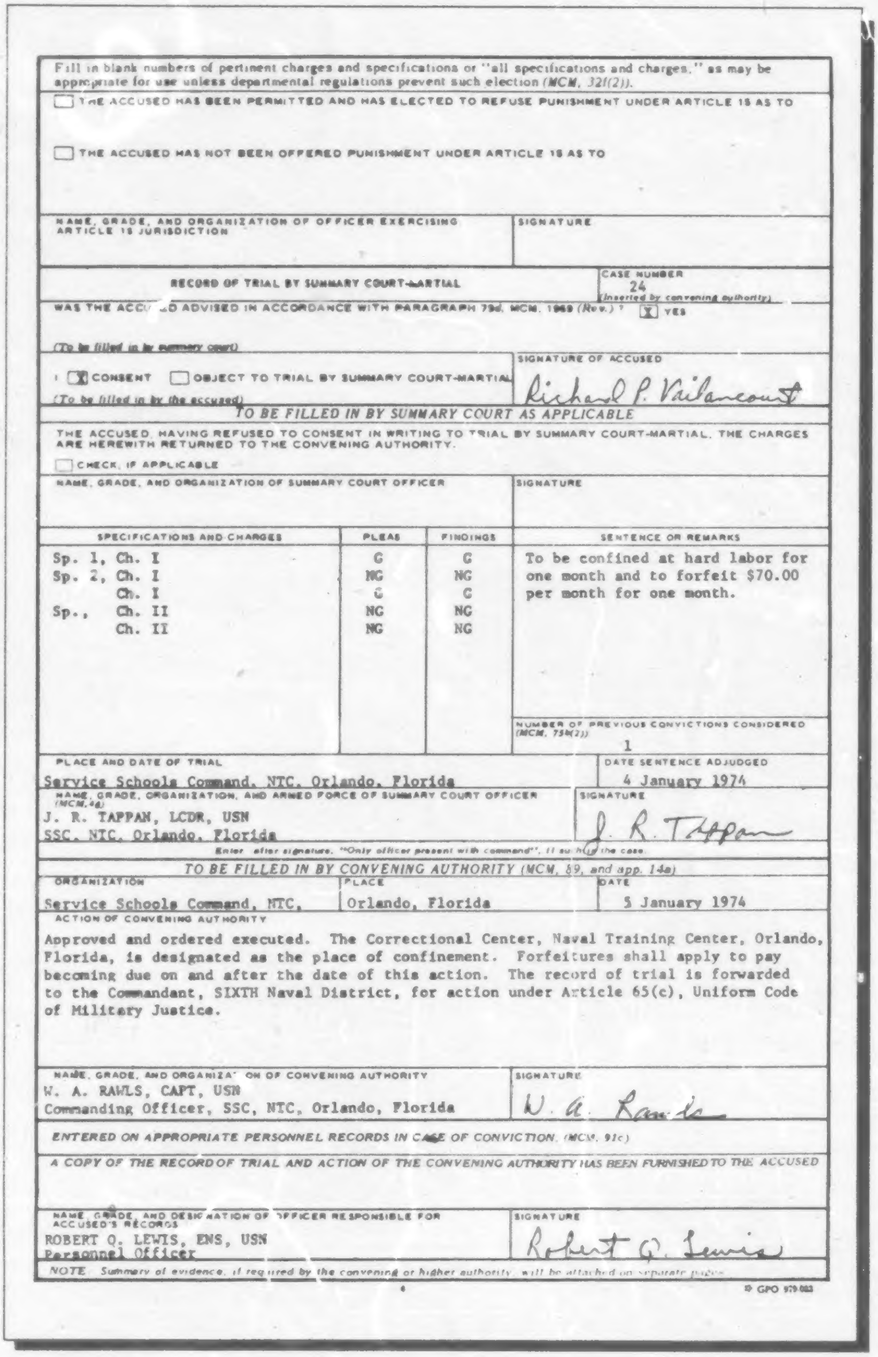
Although no reporter is required for an SCM, if it appears that the case will be rather lengthy or that a number of witnesses will be called to testify, it is probable that a reporter, if one is available, will be detailed to record the case. But in the vast majority of cases, no reporter is detailed because the necessary clerical functions can normally be performed by any available stenographic or clerical assistant. In those cases, the SCM officer summarizes the testimony himself.

### Summary of Evidence

If you are detailed as reporter for an SCM, you should record the proceedings verbatim as in a GCM or SPCM. On transcribing, you summarize the testimony in the same manner as you would in a summarized GCM or SPCM. The summary of evidence should be prepared on separate 8 X 13 inch sheets of plain paper and attached to the charge sheet prior to forwarding for review. The SCM Officer should authenticate the summary of evidence. Refer to Appendix II for examples of how to summarize testimony.

## DEPOSITIONS

One item which you may be called on to record which hasn't been covered elsewhere in this text is the deposition. What is a deposition?



Fill in blank numbers of pertinent charges and specifications or "all specifications and charges," as may be appropriate for use unless departmental regulations prevent such election *(MCM, 32f(2))*.

☐ THE ACCUSED HAS BEEN PERMITTED AND HAS ELECTED TO REFUSE PUNISHMENT UNDER ARTICLE 15 AS TO

☐ THE ACCUSED HAS NOT BEEN OFFERED PUNISHMENT UNDER ARTICLE 15 AS TO

NAME, GRADE, AND ORGANIZATION OF OFFICER EXERCISING ARTICLE 15 JURISDICTION

SIGNATURE

RECORD OF TRIAL BY SUMMARY COURT-MARTIAL

CASE NUMBER 24
*(Inserted by convening authority)*

WAS THE ACCUSED ADVISED IN ACCORDANCE WITH PARAGRAPH 79d, MCM, 1969 *(Rev.)* ? ☒ YES

*(To be filled in by summary court)*

I ☒ CONSENT ☐ OBJECT TO TRIAL BY SUMMARY COURT-MARTIAL
*(To be filled in by the accused)*

SIGNATURE OF ACCUSED
Richard P. Vailancourt

*TO BE FILLED IN BY SUMMARY COURT AS APPLICABLE*

THE ACCUSED, HAVING REFUSED TO CONSENT IN WRITING TO TRIAL BY SUMMARY COURT-MARTIAL, THE CHARGES ARE HEREWITH RETURNED TO THE CONVENING AUTHORITY.

☐ CHECK, IF APPLICABLE

NAME, GRADE, AND ORGANIZATION OF SUMMARY COURT OFFICER

SIGNATURE

| SPECIFICATIONS AND CHARGES | PLEAS | FINDINGS | SENTENCE OR REMARKS |
|---|---|---|---|
| Sp. 1, Ch. I | G | G | To be confined at hard labor for one month and to forfeit $70.00 per month for one month. |
| Sp. 2, Ch. I | NG | NG | |
| Ch. I | G | G | |
| Sp., Ch. II | NG | NG | |
| Ch. II | NG | NG | |

NUMBER OF PREVIOUS CONVICTIONS CONSIDERED *(MCM, 75b(2))*
1

PLACE AND DATE OF TRIAL
Service Schools Command, NTC, Orlando, Florida

DATE SENTENCE ADJUDGED
4 January 1974

NAME, GRADE, ORGANIZATION, AND ARMED FORCE OF SUMMARY COURT OFFICER *(MCM, 4a)*
J. R. TAPPAN, LCDR, USN
SSC, NTC, Orlando, Florida

SIGNATURE
J. R. Tappan

*Enter after signature, "Only officer present with command", if such is the case.*

*TO BE FILLED IN BY CONVENING AUTHORITY (MCM, 89, and app. 14a)*

ORGANIZATION
Service Schools Command, NTC,

PLACE
Orlando, Florida

DATE
5 January 1974

ACTION OF CONVENING AUTHORITY
Approved and ordered executed. The Correctional Center, Naval Training Center, Orlando, Florida, is designated as the place of confinement. Forfeitures shall apply to pay becoming due on and after the date of this action. The record of trial is forwarded to the Commandant, SIXTH Naval District, for action under Article 65(c), Uniform Code of Military Justice.

NAME, GRADE, AND ORGANIZATION OF CONVENING AUTHORITY
W. A. RAWLS, CAPT, USN
Commanding Officer, SSC, NTC, Orlando, Florida

SIGNATURE
W. A. Rawls

*ENTERED ON APPROPRIATE PERSONNEL RECORDS IN CASE OF CONVICTION. (MCM, 91c)*

*A COPY OF THE RECORD OF TRIAL AND ACTION OF THE CONVENING AUTHORITY HAS BEEN FURNISHED TO THE ACCUSED*

NAME, GRADE, AND DESIGNATION OF OFFICER RESPONSIBLE FOR ACCUSED'S RECORDS
ROBERT Q. LEWIS, ENS, USN
Personnel Officer

SIGNATURE
Robert Q. Lewis

*NOTE: Summary of evidence, if required by the convening or higher authority, will be attached on separate pages.*

4

GPO 979 083

192.20

Figure 4-12.—Record of Trial of Summary Court-Martial.

What is its purpose? The answers to these questions and more like them can be found in the following discussion.

A deposition can be defined as "a verbatim transcript of a witness' testimony given under oath outside the courtroom to a person authorized to take it." Depositions normally are taken to preserve the testimony of witnesses whose availability at the time of trial appears uncertain.

Article 49, *UCMJ*, authorizes the taking of depositions and the rules and procedures generally applicable are discussed in the *MCM*, paragraph 117.

## TYPES OF DEPOSITIONS

There are two types of depositions–written and oral. A *written* deposition consists of a document which sets forth a series of written questions (called interrogatories and cross-interrogatories) prepared by counsel, and the answers of the deponent (the person who testifies) thereto which were given orally by him in the presence of the deposition officer (the official before whom the testimony is given), and then reduced to writing and properly sworn to. A written deposition may be used against an accused only when the accused is present at the taking of the deposition or when he expressly waives his right to be present. An *oral* deposition consists of a document which sets forth questions asked personally of the deponent by counsel and the deponent's answers thereto, which was accomplished in the presence of the deposition officer, counsel for the accused and the government, the accused, and a reporter.

## PROCEDURES FOR TAKING DEPOSITIONS

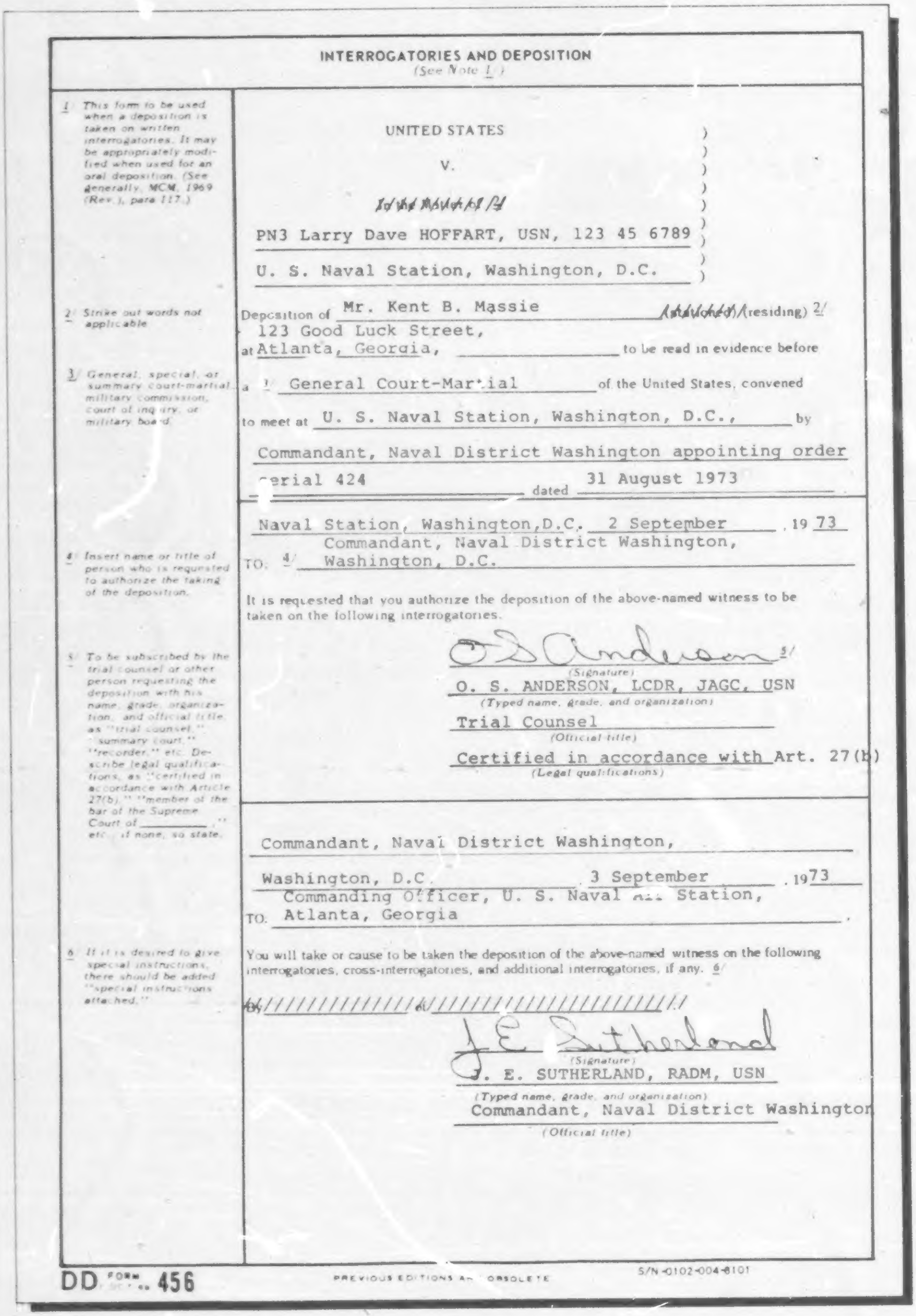
When it is determined that a deposition is needed prior to referral of the charges to trial, authorization to take the deposition must be requested from the convening authority. If the convening authority authorizes the taking of the deposition, he must appoint counsel to represent the government and the accused. Preferably, the counsel so appointed should be from an existing court. If the charges have already been referred to trial, the trial or defense counsel, as appropriate, must direct his request for authorization to the convening authority if the court is not in session, or to the ruling officer of the court if the court is in session.

The normal steps to be followed in the taking of a written deposition are as follows:

- The side desiring the deposition gives the other side written notice that the deposition has been authorized by the convening authority, advises of the time and place it will be taken, and furnishes a list of written interrogatories to be asked the deponent.
- The opposing counsel prepares cross-interrogatories and objections.
- The interrogatories, objections, and cross-interrogatories are submitted to the convening authority, or to the court if it is in session.
- The trial counsel prepares DD Form 456 (Written Deposition Form) including therein the interrogatories, cross-interrogatories, and objections.
- The trial counsel sends the deposition form to the command nearest the deponent with a cover letter, addressed return envelope, and a subpoena for a civilian witness, if necessary.
- The command receiving the deposition form appoints a deposition officer and a reporter, if necessary.
- Oral answers are recorded on the deposition form, even if an objection is set forth to the questions. The court will rule on the objections at the trial. The deposition officer must not make any rulings concerning the objections.
- The deponent examines the deposition and signs it.
- The deposition officer authenticates the deposition and returns it to the trial counsel.

The normal steps to be followed in the taking of an oral deposition are as follows:

- The side desiring the deposition gives the other side written notice that the deposition has been authorized by the convening authority, advises of the time and place it will be taken, and provides a memorandum setting forth the reasons for the deposition and the points desired to be covered in an oral examination of the deponent.
- The opposing counsel then submits a similar memorandum.
- The memoranda are submitted to the convening authority (court, if in session) who may prepare additional memoranda covering other points to be covered.



INTERROGATORIES AND DEPOSITION
(See Note 1/)

1/ This form to be used when a deposition is taken on written interrogatories. It may be appropriately modified when used for an oral deposition. (See generally, MCM, 1969 (Rev.), para 117.)

UNITED STATES )
v. )
~~In the Matter of~~ )
PN3 Larry Dave HOFFART, USN, 123 45 6789 )
U. S. Naval Station, Washington, D.C. )

2/ Strike out words not applicable

Deposition of Mr. Kent B. Massie ~~(stationed)~~ (residing) 2/
at 123 Good Luck Street, Atlanta, Georgia, ________ to be read in evidence before

3/ General, special, or summary court-martial, military commission, court of inquiry, or military board.

a 3/ General Court-Martial of the United States, convened
to meet at U. S. Naval Station, Washington, D.C., by
Commandant, Naval District Washington appointing order
serial 424 dated 31 August 1973

Naval Station, Washington, D.C. 2 September, 19 73

4/ Insert name or title of person who is requested to authorize the taking of the deposition.

TO: 4/ Commandant, Naval District Washington, Washington, D.C.

It is requested that you authorize the deposition of the above-named witness to be taken on the following interrogatories.

5/ To be subscribed by the trial counsel or other person requesting the deposition with his name, grade, organization, and official title, as "trial counsel," "summary court," "recorder," etc. Describe legal qualifications, as "certified in accordance with Article 27(b)," "member of the bar of the Supreme Court of ________," etc., if none, so state.

O S Anderson 5/
(Signature)
O. S. ANDERSON, LCDR, JAGC, USN
(Typed name, grade, and organization)
Trial Counsel
(Official title)
Certified in accordance with Art. 27(b)
(Legal qualifications)

Commandant, Naval District Washington,
Washington, D.C. 3 September, 19 73

TO: Commanding Officer, U. S. Naval Air Station, Atlanta, Georgia.

You will take or cause to be taken the deposition of the above-named witness on the following interrogatories, cross-interrogatories, and additional interrogatories, if any. 6/

6/ If it is desired to give special instructions, there should be added "special instructions attached."

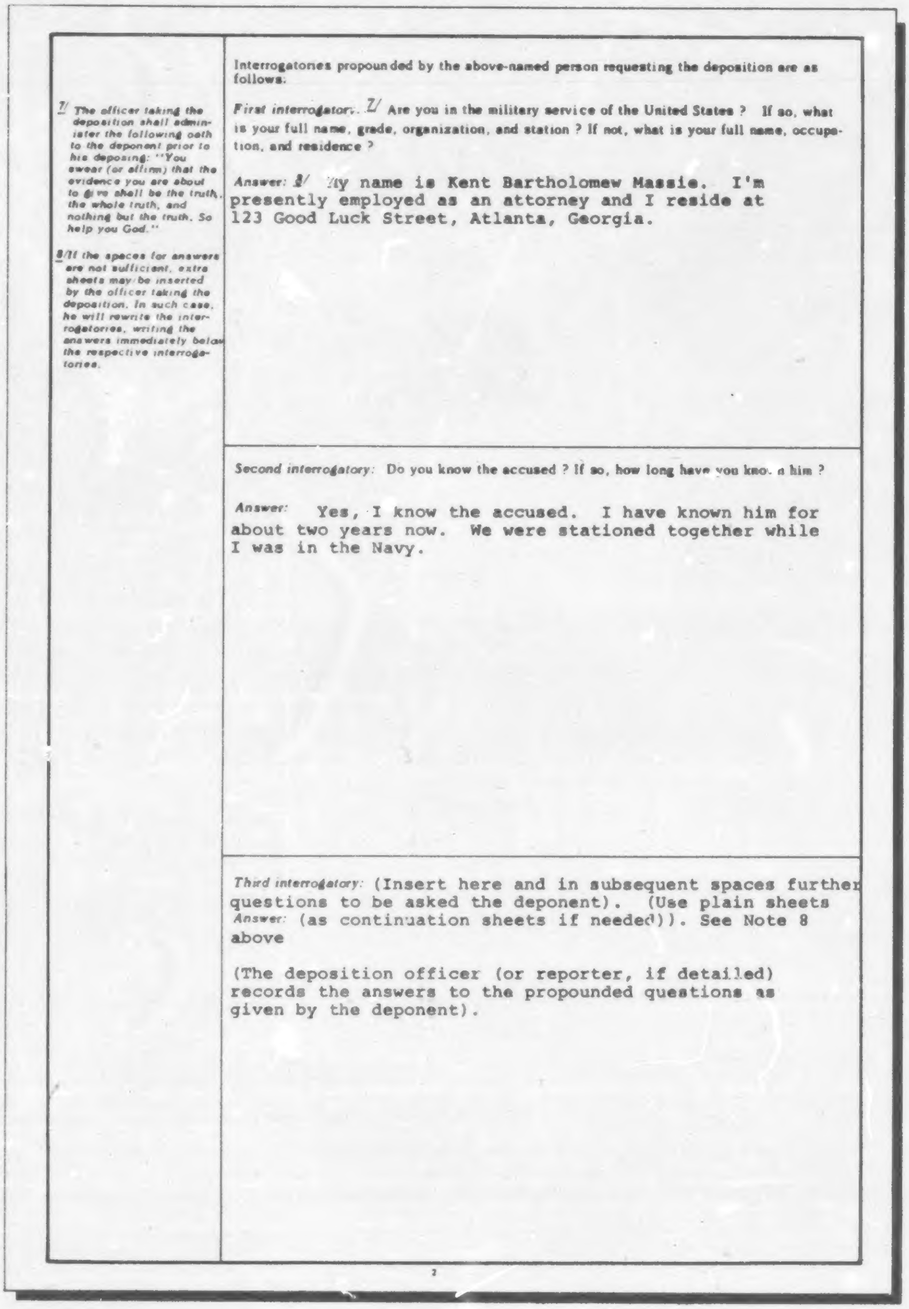
6/////////////////6/////////////////////////////./

J E Sutherland
(Signature)
J. E. SUTHERLAND, RADM, USN
(Typed name, grade, and organization)
Commandant, Naval District Washington
(Official title)

DD FORM 456 PREVIOUS EDITIONS ARE OBSOLETE S/N-0102-004-8101

192.21.1

Figure 4-13.–Written Deposition.



Interrogatories propounded by the above-named person requesting the deposition are as follows:

*First interrogatory:* 7/ Are you in the military service of the United States ? If so, what is your full name, grade, organization, and station ? If not, what is your full name, occupation, and residence ?

*Answer:* 8/ My name is Kent Bartholomew Massie. I'm presently employed as an attorney and I reside at 123 Good Luck Street, Atlanta, Georgia.

*Second interrogatory:* Do you know the accused ? If so, how long have you known him ?

*Answer:* Yes, I know the accused. I have known him for about two years now. We were stationed together while I was in the Navy.

*Third interrogatory:* (Insert here and in subsequent spaces further questions to be asked the deponent). (Use plain sheets

*Answer:* (as continuation sheets if needed)). See Note 8 above

(The deposition officer (or reporter, if detailed) records the answers to the propounded questions as given by the deponent).

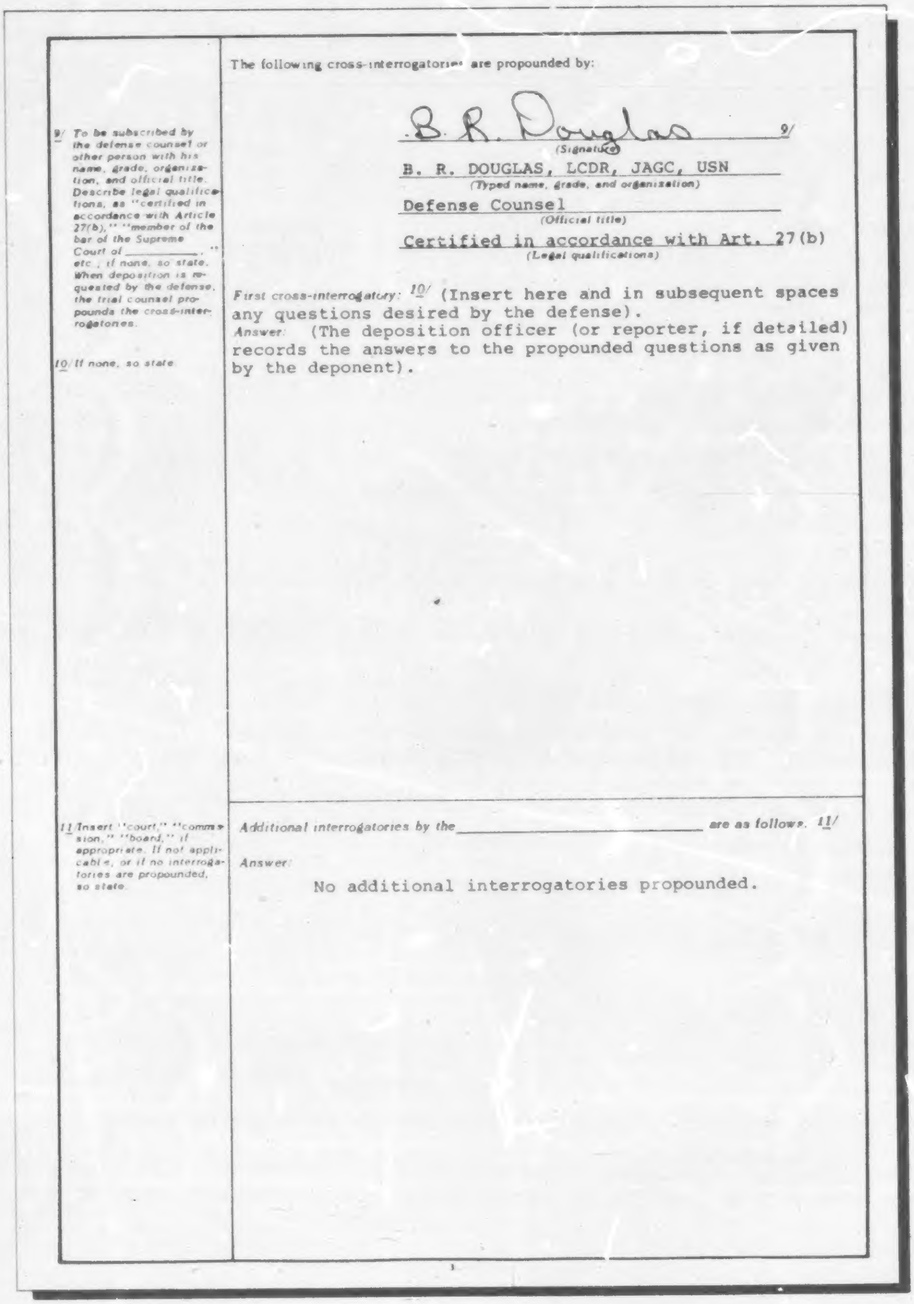
*7/ The officer taking the deposition shall administer the following oath to the deponent prior to his deposing: "You swear (or affirm) that the evidence you are about to give shall be the truth, the whole truth, and nothing but the truth. So help you God."*

*8/ If the spaces for answers are not sufficient, extra sheets may be inserted by the officer taking the deposition. In such case, he will rewrite the interrogatories, writing the answers immediately below the respective interrogatories.*

2

192.21.2

Figure 4-13.—Written Deposition—(Continued).



The following cross-interrogatories are propounded by:

B. R. Douglas 9/
(Signature)

B. R. DOUGLAS, LCDR, JAGC, USN
(Typed name, grade, and organization)

Defense Counsel
(Official title)

Certified in accordance with Art. 27(b)
(Legal qualifications)

9/ To be subscribed by the defense counsel or other person with his name, grade, organization, and official title. Describe legal qualifications, as "certified in accordance with Article 27(b)," "member of the bar of the Supreme Court of ____________," etc.; if none, so state. When deposition is requested by the defense, the trial counsel propounds the cross-interrogatories.

*First cross-interrogatory:* 10/ (Insert here and in subsequent spaces any questions desired by the defense).

*Answer:* (The deposition officer (or reporter, if detailed) records the answers to the propounded questions as given by the deponent).

10/ If none, so state.

*Additional interrogatories by the* ____________________ *are as follows.* 11/

*Answer:*

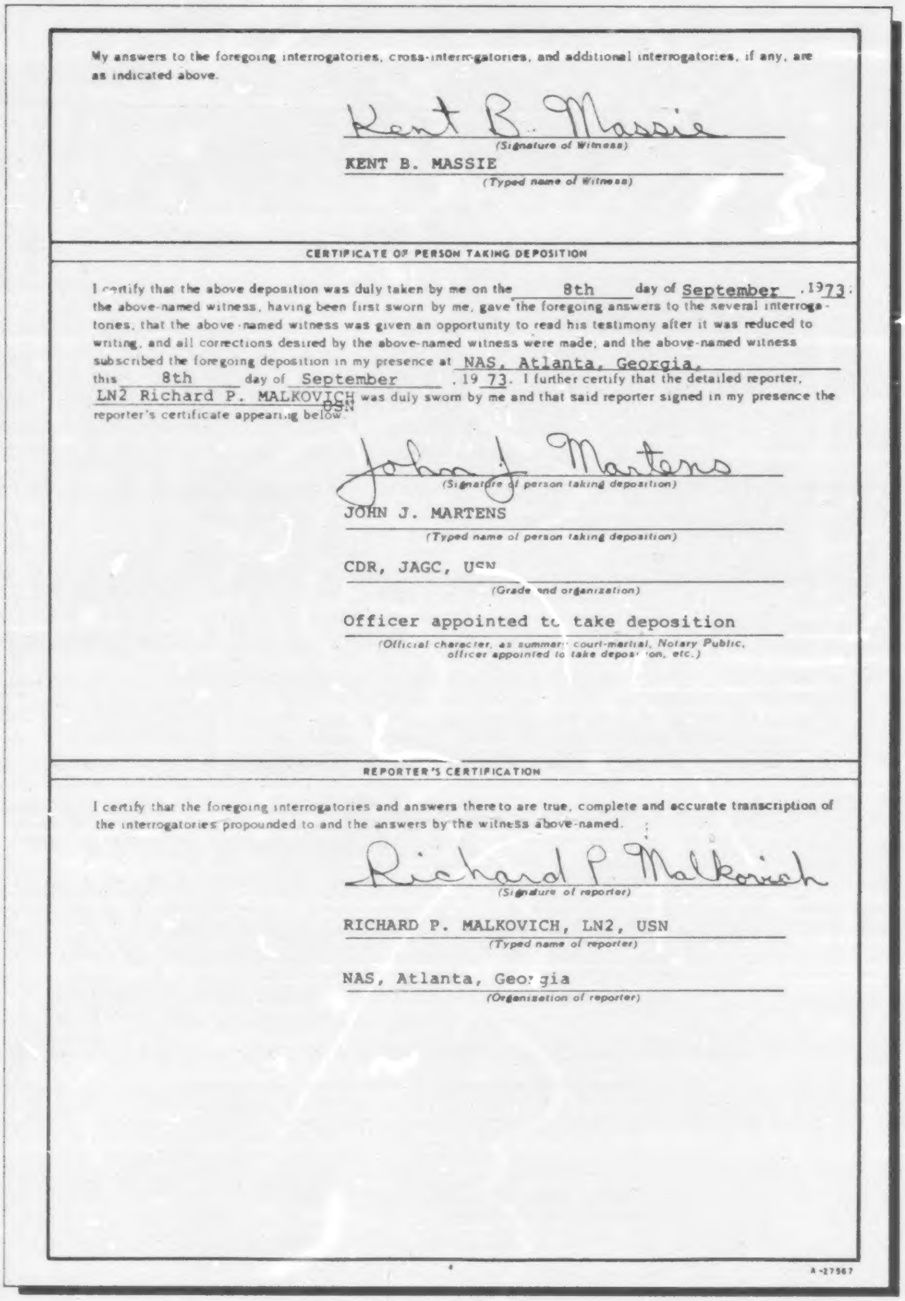
No additional interrogatories propounded.

11/ Insert "court," "commission," "board," if appropriate. If not applicable, or if no interrogatories are propounded, so state.

1

192.21.3

Figure 4-13.—Written Deposition—(Continued).



My answers to the foregoing interrogatories, cross-interrogatories, and additional interrogatories, if any, are as indicated above.

Kent B. Massie
(Signature of Witness)

KENT B. MASSIE
(Typed name of Witness)

CERTIFICATE OF PERSON TAKING DEPOSITION

I certify that the above deposition was duly taken by me on the 8th day of September, 1973; the above-named witness, having been first sworn by me, gave the foregoing answers to the several interrogatories; that the above-named witness was given an opportunity to read his testimony after it was reduced to writing, and all corrections desired by the above-named witness were made; and the above-named witness subscribed the foregoing deposition in my presence at NAS, Atlanta, Georgia, this 8th day of September, 19 73. I further certify that the detailed reporter, LN2 Richard P. MALKOVICH USN was duly sworn by me and that said reporter signed in my presence the reporter's certificate appearing below.

John J. Martens
(Signature of person taking deposition)

JOHN J. MARTENS
(Typed name of person taking deposition)

CDR, JAGC, USN
(Grade and organization)

Officer appointed to take deposition
(Official character, as summary court-martial, Notary Public, officer appointed to take deposition, etc.)

REPORTER'S CERTIFICATION

I certify that the foregoing interrogatories and answers thereto are true, complete and accurate transcription of the interrogatories propounded to and the answers by the witness above-named.

Richard P. Malkovich
(Signature of reporter)

RICHARD P. MALKOVICH, LN2, USN
(Typed name of reporter)

NAS, Atlanta, Georgia
(Organization of reporter)

A-27567

192.21.4

Figure 4-13.—Written Deposition—(Continued).

- The trial counsel then prepares the form for the deposition and it, along with the memoranda, is mailed to the command nearest the deponent under a cover letter with an addressed return envelope and subpoena for a civilian witness, if necessary. If the deposition is to be taken locally, the convening authority appoints a deposition officer, who, together with counsel, takes the deposition.
- The command receiving the deposition form appoints a deposition officer, counsel for the government and accused, and a reporter. However, if charges have been referred to trial, the accused must consent to the appointment of a second counsel (other than counsel who will represent him before the court) to represent him.
- The deposition is then taken.
- Oral questions and the answers thereto are transcribed verbatim, signed by the deponent, authenticated by the deposition officer and returned to the trial counsel.

Figures 4-13 and 4-14 are examples of written and oral depositions.

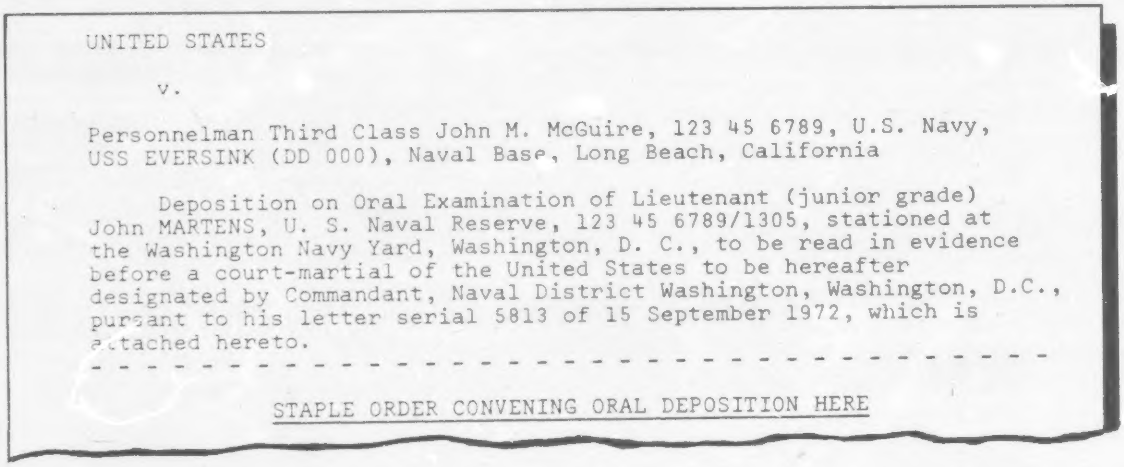
## OTHER REPORTING DUTIES

On occasion you may be called upon to record proceedings other than military courts or investigations. You could be called on to record meetings or conferences for which a substantially accurate record of what transpired at the meeting or conference is needed or required.

There is no prescribed or standard format for such proceedings, and you should seek guidance concerning the format of the record from some responsible person concerned with the meeting or conference.

By using basically the same method that you use in court reporting, you should be able to produce an accurate record of the proceedings in the format desired or directed by appropriate authority. Basically, what you do is identify the speaker and then record his statements. You then prepare a verbatim or summarized record, as required.

In summation, legal reporting is one of the most important and challenging duties of your rating as a Legalman. You will often find yourself right in the middle of important investigations, inquiries, or judicial proceedings for which an accurate record is all important. Legal reporting is both a challenging and rewarding duty which must be accomplished accurately and efficiently if it is to be of benefit to officials who are charged with the proper administration of the Navy. Your job, as a reporter, is to provide this accurate and efficient clerical support.



UNITED STATES

v.

Personnelman Third Class John M. McGuire, 123 45 6789, U.S. Navy, USS EVERSINK (DD 000), Naval Base, Long Beach, California

Deposition on Oral Examination of Lieutenant (junior grade) John MARTENS, U. S. Naval Reserve, 123 45 6789/1305, stationed at the Washington Navy Yard, Washington, D. C., to be read in evidence before a court-martial of the United States to be hereafter designated by Commandant, Naval District Washington, Washington, D.C., pursant to his letter serial 5813 of 15 September 1972, which is attached hereto.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

STAPLE ORDER CONVENING ORAL DEPOSITION HERE

192.22.1

Figure 4-14.—Format for Oral Deposition.

All parties concerned with the taking of the deposition met on 18 September 1972, at 0900 hours, on board USS WHALE (SS 000), located at Naval Base, Charleston, South Carolina, by agreement between Counsel for the accused and Counsel for the Government.

The following persons were present:

Lieutenant Commander John E. Doe, U.S. Navy, Deposition Officer;
Lieutenant (junior grade) John Martens, U.S. Naval Reserve, Deponent;
Lieutenant Robert L. Lewis, JAGC, U.S. Navy, Trial Counsel, certified in accordance with Article 27b, UCMJ;
Lieutenant John Q. Public, JAGC, U.S. Navy, Defense Counsel, certified in accordance with Article 27b, UCMJ;
Legalman Second Class Richard P. Malkovich, U.S. Navy, Reporter; and
Personnelman Third Class John M. McGuire, U.S. Navy, Accused.

Counsel for the Government stated that he was ready to proceed.

Counsel for the accused stated that he was ready to proceed and had the opportunity to interview the witness prior to the instant proceedings.

Accused was asked by whom he desired to be represented and he stated by Lieutenant John Q. Public, U.S. Navy, the appointed Defense Counsel.

The reporter was sworn.

Lieutenant (junior grade) John Martens, U.S. Naval Reserve, a witness for the prosecution, was sworn and testified as follows:

DIRECT EXAMINATION

Questions by the prosecution.

Q..............................

A..............................

CROSS EXAMINATION

Q..............................

A..............................

REDIRECT EXAMINATION

Q..............................

A..............................

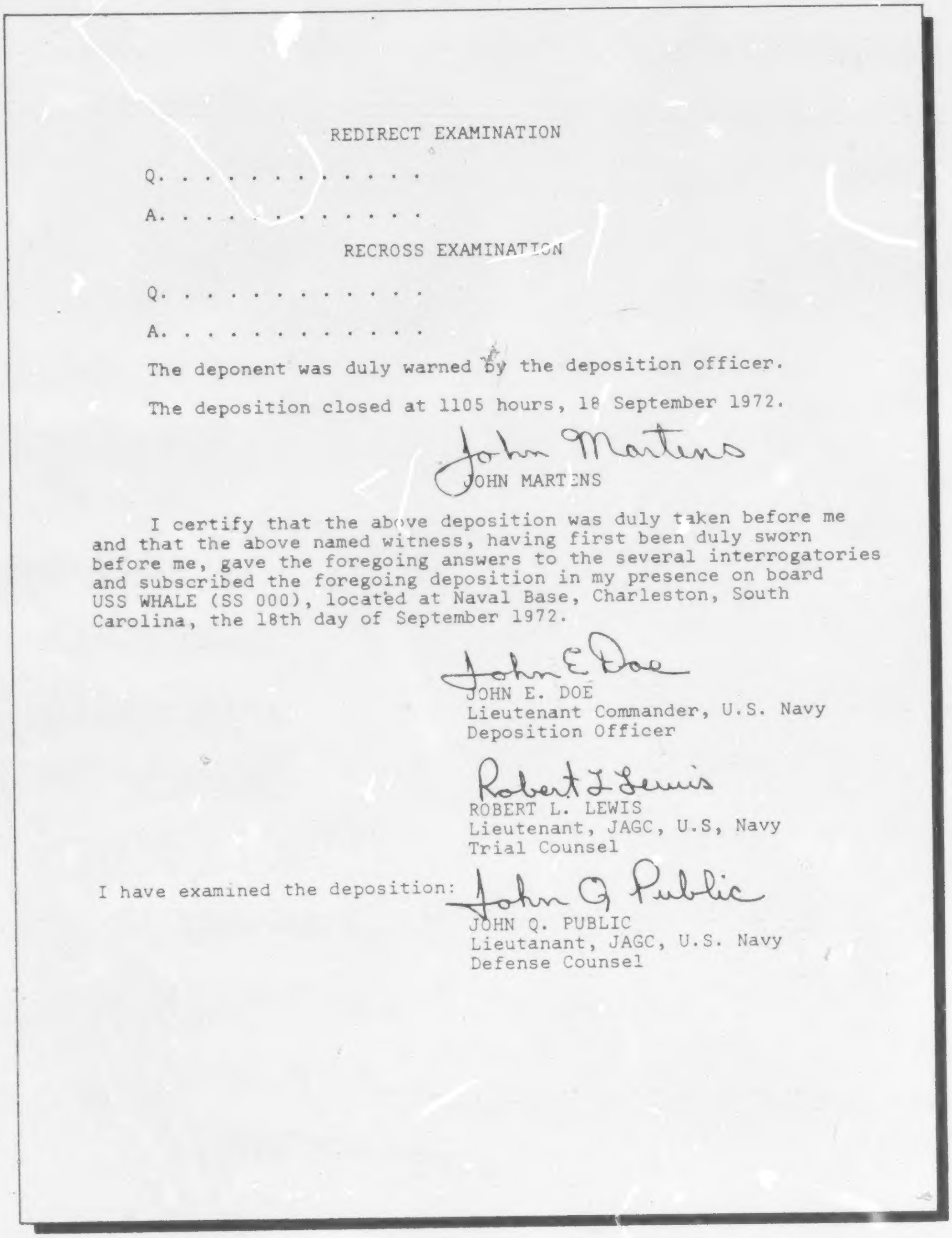
RECROSS EXAMINATION

Q..............................

A..............................

192.22.2

Figure 4-14.—Format for Oral Deposition—(Continued).



REDIRECT EXAMINATION

Q. . . . . . . . . . . . .

A. . . . . . . . . . . . .

RECROSS EXAMINATION

Q. . . . . . . . . . . . .

A. . . . . . . . . . . . .

The deponent was duly warned by the deposition officer.

The deposition closed at 1105 hours, 18 September 1972.

John Martens
JOHN MARTENS

I certify that the above deposition was duly taken before me and that the above named witness, having first been duly sworn before me, gave the foregoing answers to the several interrogatories and subscribed the foregoing deposition in my presence on board USS WHALE (SS 000), located at Naval Base, Charleston, South Carolina, the 18th day of September 1972.

John E Doe
JOHN E. DOE
Lieutenant Commander, U.S. Navy
Deposition Officer

Robert L Lewis
ROBERT L. LEWIS
Lieutenant, JAGC, U.S, Navy
Trial Counsel

I have examined the deposition: John Q Public
JOHN Q. PUBLIC
Lieutanant, JAGC, U.S. Navy
Defense Counsel

192.22.3

Figure 4-14.—Format for Oral Deposition—(Continued).

## Chapter 5

# PRELIMINARY CONSTITUTIONAL CONSIDERATIONS

You have previously been introduced by *YN 3&2* to the Navy disciplinary system. The time has now come for a more searching examination of the *UCMJ* and of your duties as a Legalman in the area of military justice. Subsequent chapters will be devoted to nonjudicial punishment (NJP), to courts-martial, and to the pretrial and posttrial activity associated with courts-martial. Before these subjects can be broached, however, it is necessary to develop an understanding of several important constitutional principles—principles which, if not scrupulously adhered to, may invalidate the results of disciplinary proceedings. Because the fatal mistakes are usually made even before charges are brought and because you will be in an ideal position to avoid many of these mistakes, this discussion of the rights of persons being interrogated and of search and seizure standards will precede any discussion of the disciplinary hearing.

### PRE-INTERROGATION WARNINGS

The Fifth Amendment to the *U.S. Constitution* provides, among other things, that no person "shall be compelled in any criminal case to be a witness against himself." The Sixth Amendment requires that the accused in a criminal case "be informed of the nature . . . of the accusation" and that he have the "Assistance of Counsel for his defense." In passing the *Uniform Code of Military Justice*, Congress enacted the spirit of the Fifth Amendment in Article 31. Much later, the Court of Military Appeals made applicable to the military a decision of the Supreme Court of the United States which declared that if an accused person is interrogated with a view towards using his statement in evidence against him, he has not only the right to have the assistance of counsel, but he must be advised of this right before any interrogation. Before trial counsel may introduce a confession or admission of the accused into evidence at a court-martial, he will, of course, be required to demonstrate the voluntary nature of the confession or admission. He must show that the accused, before he made the statement, was advised of his rights under Article 31 and his right to counsel. Inasmuch as you will be dealing with persons suspected of offenses, you will be primarily interested with real world ramifications of these rights. When and by whom must a suspect be warned? What constitutes a valid warning? What are the consequences of a failure to warn?

### ARTICLE 31, UCMJ AND THE FIFTH AMENDMENT

Article 31 of the *UCMJ* is a statutory enactment of judicial interpretations of the Fifth Amendment protection against compulsory self-incrimination. Like all statutes, it is of a lesser dignity than the constitutional provision. It is, however, broader than the constitutional guarantee and will, therefore, be used as a basis of discussing the rights of persons subjected to interrogation.

#### Article 31

Article 31 is divided into four subsections, the first three of which regulate the activities of persons subject to the Code when they are questioning or interrogating persons. The fourth subsection prohibits the receipt into evidence of any statement taken from an accused in violation of the first three subsections.

ARTICLE 31a–"No person subject to this chapter may compel any person to incriminate himself or to answer any question, the answer to which may tend to incriminate him"(Article 31a, *UCMJ*). Compulsion and self-incrimination are the keys to understanding this subsection. Evidence is incriminating if it tends to establish guilt; interrogation is improper under Article 31a if it *compels* the person being questioned to give responses which *tend to establish his guilt of a crime*. Notice that the article deals with "person(s)," not just suspects. The privilege against self-incrimination applies to both accused persons and to witnesses. The type of compulsion contemplated could involve an in-court situation where either a witness or the accused is *required* to answer questions.

In court, the accused has an absolute right *not* to take the stand and testify. If he chooses to take the stand to testify on any or all of the charges against him, he may be compelled to answer any questions concerning the charge or charges about which he did testify, *even though the answer would incriminate him*.

The accused, may, however, take the stand and limit his testimony to a collateral issue. He retains his privilege against self-incrimination as to all other issues.

Example: Prosecution offers a statement of the accused into evidence. The accused takes the stand to testify as to the voluntariness of the statement. Trial counsel, on cross-examination, asks the accused "But isn't your statement true?" This is improper. The accused may not be compelled to answer the question. He may assert his right against self-incrimination.

Similarly, the *accused* who is defending against more than one specification may elect to take the stand and limit his testimony to less than all of the offenses charged. If he does this, he retains his privilege against self-incrimination as to the offenses about which he does not testify.

On the other hand, a *witness* may be compelled to come to court, to take the stand, and to testify. But he may not be compelled to incriminate himself.

The witness' privilege against self-incrimination is personal. He must assert it himself, and when he does, the ruling officer will decide if the answer will in fact incriminate the witness. If he decides that it will not incriminate the witness, he will direct the witness to answer. If the ruling officer is incorrect in his determination, the answer cannot later be used in a trial against the witness, as the answer will have been compelled in violation of Article 31a.

ARTICLE 31c.–"No person subject to this chapter may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade him." (Article 31c)

This subsection is little more than an enactment of a rule of evidence which precludes admission of immaterial or irrelevant evidence. It is important to notice that the witness may be compelled to answer, no matter how degrading the answer may be, if the court determines the evidence to be relevant.

ARTICLE 31b.–"No person subject to this chapter may interrogate or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offense of which he is accused or suspected and that any statement made by him may be used against him in a trial by court-martial." (Article 31b)

This is the subsection of Article 31 that will be most significant to you. The examples given above indicate that it is the person conducting hearings who must concern himself with Articles 31a and 31c. On the other hand, you, as Legalman, will be intimately involved in pre-trial and investigative interviews with suspects, and you must understand and comply with Article 31b so as to ensure the admissibility of any statement elicited.

ARTICLE 31d.–"No statement obtained from any person in violation of this article or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against him in a trial by court-martial." (Article 31d)

This subsection is the teeth of Article 31. In general terms, it provides that evidence or statements obtained without affirmative compliance with Article 31 by the interrogator are inadmissible in a court-martial. A few examples are necessary to define the scope of unlawful influence and inducement.

- Interrogator tells accused that if he doesn't make a statement he will see that accused's wife is arrested. Violation of Article 31.
- Interrogator tells accused that if he makes a statement he will see to it that the case will be handled in juvenile court and will not effect accused's service. Violation of Article 31.
- Interrogator questions accused for twelve hours straight. Does not allow accused to eat or smoke. Makes him sit at attention. Doesn't allow head calls. Violation of Article 31.

A failure to comply with Article 31 does not necessarily mean that a guilty person goes free. There may well be independent evidence sufficient to convict. At the very least, however, it does mean that the business of prosecuting charges will be needlessly complicated. A little experience will convince you that it's much easier to give the required warnings—even at the possible expense of making the interrogation more difficult—than it is to attempt to develop independent evidence sufficient to convict several years after the fact when the military conviction has been set aside on appeal. IF IN DOUBT, WARN!

### Who Must Be Warned?

The plain language of Article 31b indicates that the subsection is applicable only to persons *accused* or *suspected* of an offense. If an individual is to be questioned merely as a witness, he need NOT be warned. If, however, during the interview of a witness it becomes apparent that he may have committed a crime, he must be warned prior to continued interrogation.

### Who Must Give The Warning?

The plain language indicates that only the persons subject to the UCMJ are required to give the warning. BEWARE, however, of too literal a reading. Persons not subject to the Code but employed by the Armed Forces for law enforcement or investigative purposes must give the warning. This would include ONI agents, CID agents, and their counterparts in other services. Persons acting on the request of the military in furtherance of a military investigation also must warn.

### When Must The Warnings Be Given?

Before *any* question may be asked of an accused or a suspect, warnings must be given. Warnings after the questioning will not cure the defect. If a witness is being questioned and the interrogator commences to suspect that the witness has committed some offense, the interrogator must warn as soon as the suspicion of guilt crystallizes in the mind of the interrogator.

Example: Petty Officer Jones was a witness at Mast last week where he saw Smith receive 30 days restriction to the limits of the ship. While on Shore Patrol Duty, Petty Officer Jones sees Smith on the third barstool from the end at "Leo's Last Stop." He approaches Smith and asks him, "Aren't you on restriction?" Because Petty Officer Jones suspected Smith of breaking restriction the question should have been preceded by the warnings.

Don't be terribly alarmed by a fear that the guilty Smith will get off scot-free as a result of PO Jones' failure to warn properly. Any admission made at this time by Smith will be inadmissible (see preceding discussion of Article 31d), but it will still be a relatively simple matter to convict Smith of a violation of breaking restriction based on Jones' testimony that he personally observed Smith at a place outside the limits of the ship at a time during which he was on restriction.

### Acts As Statements

Some acts not usually thought of as "statements" fall within the privilege against self-incrimination. When one of these acts is requested from an accused or suspect, Article 31 warnings must be given. The following is a selected list of protected acts:

- the giving of blood samples or samples of other body fluids
- voice communication for purposes of identification
- handwriting samples
- production of documents (except where independent duty to produce documents exists on part of accused or suspect, as in the case of account books in possession of disbursing officer who is suspected of embezzling)
- "verbal acts" or acts which amount to a statement (e.g., having an individual identify property by pointing to it)

Certain other acts may be required of an accused or suspect without the necessity of giving an Article 31 warning. Some examples of acts held by the courts not to be protected by the privilege against self-incrimination are shaving, growing a beard, trying on clothes, displaying the body or parts of it, showing scars, giving fingerprints, placing feet in casts of tracks, and displaying tattoos. A suspect or an accused may be compelled to do any of these things without a violation of his Article 31 rights resulting. One word of caution: if you are in doubt as to whether a particular act is protected by the privilege against self-incrimination, give the Article 31 warning.

## RIGHT TO COUNSEL

Supreme Court decisions interpreting the Sixth Amendment have held that an accused who is in "custody" and who is to be interrogated has the right to counsel and the further right to be advised of his right to counsel. The Court of Military Appeals has held this rule to be applicable to military custodial interrogation. U.S. v. Tempia, 16 USCMA 629, 37 CMR 249 (1967). Failure to advise the accused of his right to counsel or failure to provide counsel as requested will trigger an exclusionary rule similar to that contained in Article 31d; evidence obtained at an interrogation in the absence of the *Tempia* warnings will be inadmissible at a trial by court-martial. Two questions remain: (1) what is custody? and (2) of what does the right to counsel consist?

### Custodial Interrogation

"Custody" does not depend on execution of any technicalities of placing a suspect under arrest. Rather a suspect is considered to have been taken into custody if he has been deprived of his freedom of action in any significant way. Two examples will highlight the broad definition of the concept:

- Seaman Glotch is suspected by his CO of having marijuana in his possession. The CO directs him to report to CID for questioning. Upon his arrival at CID, Seaman Glotch is in custody for the purposes of counsel warning requirements.
- Airman Harris is seen downtown by his division officer who is aware that Harris had been restricted last week by the CO for 30 days. He stops Harris. Harris is in custody.

As a general rule, advice to the accused of his right to counsel is required whenever an Article 31 warning is required. The major exception to this rule is that the accused has no right to counsel at an Article 15 *hearing* (as opposed to a pre-hearing interrogation). Observe, however, that no statement made at Mast, in the absence of warnings as to the right to counsel, can be used in a later court-martial proceeding.

### Scope of the Right

What are the rights to counsel of which the accused must be informed? In the first place, counsel means a lawyer within the meaning of Article 27, *UCMJ*. He must be a judge advocate of one of the armed services, who is a graduate of an accredited law school or a member of the bar of a Federal court or of the highest court of a State; or he must be a civilian member of the bar of a Federal Court or of the highest court of a State. Unless the accused waives his right to counsel, a military lawyer will be appointed by military authority without cost to the accused. Alternatively, the accused has the right to procure counsel of his choice at his own expense. The accused has the absolute right to consult with counsel *prior* to the interrogation. He is entitled to have counsel present with him *during* the interrogation.

An associated right, itself not technically a part of the Sixth Amendment right to counsel, is that the accused has the power to terminate the interrogation at any time for any reason (or for no reason at all!). If the accused indicates in any manner that he desires to terminate the interview, it must be terminated. Failure to do so makes inadmissible any statement made after the "request" to terminate.

## HOW TO GIVE THE WARNINGS

The foregoing discussions of Fifth and Sixth Amendment rights have indicated that suspects have rights that do not run to mere witnesses. Guidelines have been given for helping you determine when a witness shifts to the "suspect" category. The concept of "in custody" has been explained. Now that you know how to fit the person who is being interrogated into the various categories, you are probably interested in a formula that assures the admission of any evidence produced by an interrogation.

### Warning The Witness

Under Article 31, a witness enjoys two significant rights. He may not be compelled to incriminate himself. Neither may he be compelled to make a statement or produce evidence before a military tribunal if the evidence is not material to the issue and tends to degrade him. Even though each witness should be advised of these rights, they are unlikely to become significant to you, the Legalman, unless the witness migrates to the "suspect" category—to which we now turn.

### Warning The Suspect

All suspects and accused persons are entitled to warnings flowing from rights guaranteed by both the Fifth and Sixth Amendments. A proper warning to one accused or suspected of an offense is as follows:

1. You are suspected of committing the following offense(s):
(Here describe the offense(s) )
2. You have the right to remain silent.
3. Any statement you do make may be used as evidence against you in trial by court-martial.
4. You have the right to obtain and consult with a lawyer, either a civilian lawyer retained by you at your own expense, or, if you wish, a military lawyer who will be appointed to act as your counsel without cost.
5. You have the right to have a retained civilian lawyer or an appointed military lawyer present with you during this interview, and
6. You have the right to terminate this interview at any time and for any reason.
7. Do you understand?

Ascertaining that the accused or suspect fully understands his rights is particularly important, for in the absence of understanding there can be no intelligent choice to exercise or waive the rights. A court may later look not only to the words used in giving the warning, but also to the suspect's age, intelligence, and experience in this regard.

Your command will likely have preprinted local forms which detail these rights. Typically the accused will be advised in accordance with the form and will sign on the form to indicate that he has been advised of his rights. The form is then retained in case it becomes necessary to prove in court that the warnings were properly given. If your command does not have a preprinted form, a sample appears as Appendix A-1-n of the *JAG Manual.* You will need to add to this sample a statement that the accused has the power to terminate the interview at any time.

When only the Article 31 warning is required (that is, when the accused is going to Mast and has no right to counsel), the warning will eliminate references to the right to counsel and

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is given in the manner prescribed by the article itself. Article 31b imposes three requirements:

(a) First, that the accused or suspect be informed of the nature of the accusation against him;

(b) Second, that he be told that he need make no statement regarding the offense of which he is accused or suspected; and

(c) Third, that he be advised that any statement made by him may be used as evidence against him at a trial by court-martial.

It is essential not only that the accused understand the advice given, but also that the person giving the advice make certain that the accused understands. Accordingly, a proper Article 31 warning could be phrased as follows:

> Example: (The accused is suspected of stealing two wallets, which contained a total of $30): "Seaman Glotch, I advise you that I suspect you of stealing two wallets from the lockers of Seamen Smith and Klein last night. I advise you that you need say nothing at all about these offenses and if you do say anything, what you say may be used against you as evidence in a trial by court-martial. Do you understand?"

It is *NOT* sufficient merely to read Article 31 to the suspect or accused. Neither is it compliance with Article 31 to tell the suspect or accused that he need not "incriminate himself."

## SEARCH AND SEIZURE

The Fourth Amendment protects the individual against "unreasonable searches and seizures." It further provides that no search warrants will be issued unless there is "probable cause," supported by Oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized. An exception to the "probable cause" requirement, however, is that there is no requirement for a showing of probable cause to search Government property that is within the custody of the Government. The amendment, while forbidding unlawful searches, does not specify a remedy for its violation. After more than a century of weak and often ineffective enforcement of the protection against unlawful search, the Supreme Court in 1914 fashioned an exclusionary remedy--evidence illegally seized would not be admissible in court. This exclusionary rule is recognized and applied to all courts-martial by *MCM*, para. 152.

In addition to your interest in individual liberties, you will be concerned with preserving the admissibility at trial of seized evidence. Here following is a guide to the law and proper procedures concerning searches and seizures. The definition of search and the kinds of searches which are subject to the rule will be treated first. Once it is decided that a search is involved, there are several kinds of searches which are regarded as lawful. Each of these will be discussed, as it relates to the military situation, together with recommended procedures to ensure that the search is lawful.

### WHAT CONSTITUTES A SEARCH?

A search has been defined as "an examination of a man's house or other buildings or premises, or of his person, with a view to the discovery of contraband or illicit or stolen property, or some evidence of guilt to be used in the prosecution of a criminal action for some crime. . . ."

#### Places Protected By 4th Amendment

Any building owned or occupied by the accused (or a suspect) is protected. Premises owned or occupied by the accused include property he rents, such as a hotel room, or property which he is allowed to use by the owner, such as an accused's room in his parents' house. In the military, it would include spaces *assigned for the exclusive personal use* of the accused, such as his bunk and his footlocker in a berthing space, or an entire room or apartment if assigned for the accused's exclusive use, *even though the ship or building is the property of the United States.* The protection does not extend to military property which is merely used by the accused, such as working space assigned to the accused.

### Items Found in Plain View

The requirement for lawful search does not apply to contraband or the fruit of a crime which is found in plain view by the law enforcement officer or military superior who is lawfully on the premises. Thus, if a petty officer walking through a berthing space sees marijuana cigarettes (contraband) in an *open* locker, he may lawfully seize them at once and they may be used as evidence at trial. If the petty officer while acting as a private individual and without authorization or other legal justification had opened an unlocked locker and found a stolen watch (fruit of a crime), it could be used at a trial. However, if this same petty officer were acting as an agent for the Government (i.e., Master-at-Arms, Shore Patrol, etc.), and had *opened* an unlocked locker, and there found the stolen watch (fruit of a crime), it could not be used at trial.

### "Searches" by Private Persons

The Fourth Amendment and *MCM*, para. 152, protect only against the actions of the government or its agents. Thus, if a private individual (such as the victim of a theft) conducts his own search for his own reasons (to recover his property) with no request or involvement by the authorities, then any evidence he finds could be used at trial. Beware, however, of attempting to use this as a loophole for avoiding the operation of the Fourth Amendment by sending the victims of crimes on searching expeditions. Once you, the Legalman, become aware of a crime and recommend a private "search" to the victim, the government is involved, and the Fourth Amendment applies.

### Administrative Inspection

Inspections routinely conducted for purposes other than the investigation of suspected offenses (such as a regular sea bag inspection) are not searches within the meaning of the Fourth Amendment. Any evidence found may be used. Again, the advice is in order that you should not try to use the "inspection" route to circumvent the Fourth Amendment.

The key distinction between a search and an inspection often rests in the MOTIVE behind the investigation. A search is an examination made with a view toward the prosecution of a crime by the discovery of contraband and/or other evidence. An inspection, on the other hand, is merely an official examination made to determine the readiness of the person, organization, or equipment. Even though criminal proceedings may result based on the findings of the inspection, it is not conducted primarily with a view toward criminal action. The difference in the motive will often decide the applicability of the Fourth Amendment and often spell the difference between conviction and acquittal.

In order to determine whether the motive behind the examination was one of inspection or search, the court will look to the ROUTINENESS of the inspection, that is, whether such examinations are entirely administrative and whether they are of a recurring nature. In deciding whether the inspection was in fact routine, the court will consider whether the inspection was scheduled or conducted shortly after a crime was commited. If an examination was conducted soon after a crime is reported, that is strong evidence that the inspection is not administrative. but prosecutorial, and thus would constitute a search subject to Fourth Amendment guidelines.

A second fact which the courts will consider on the issue of routineness is whether the examination of *all personnel and equipment was conducted in the same manner.* If it is discovered that one or two sailors were singled out and given a more thorough search than the rest, the court will find the inspection to be a search without probable cause and thus would find the evidence inadmissible. Routine or unscheduled inspections for the purpose of ensuring that the command is free from drugs, weapons, and other contraband may be conducted, and the evidence will be admissible provided that the inspection is to keep prohibited items out, rather than with any view toward prosecution. In order to ensure that the motive of these unannounced contraband inspections would not be misunderstood by a court, it is recommended that an official announcement of the first inspection be made together with the notice that all future follow-up inspections will be unannounced. In this manner, the policy of routine unannounced contraband inspections would be established.

SHAKEDOWN INSPECTIONS.–A commanding officer is responsible for both the readiness and the security of his command as well as for the health, orderliness, and welfare of his personnel. In order to ensure the proper functioning of his physical plant and of his men, the commanding officer may conduct periodic unannounced inspections of *all* the facilities and property located within the installation or unit which comprises his command. If all the facilities within the particular area are not searched, the particular spaces designated for search should be systematically selected. If any evidence is discovered in the course of one of the inspections, it can freely be admitted in later trial without fear of violating the Fourth Amendment.

ADMINISTRATIVE INVENTORY.–Any evidence discovered in the course of a properly conducted administrative inventory of personal effects will also be admissible at trial without Fourth Amendment complications. As in the case of shakedown inspections, the inventory of articles belonging to personnel confined, hospitalized, or on unauthorized absence must be routine, and the personal effects of any one person must not be given extra careful scrutiny. If the court finds the inventory to be other than administrative, it will likely be considered violative of the Fourth Amendment.

GATE AND QUARTERDECK INSPECTIONS.–The commanding officer has the traditional authority to conduct searches at gates and on the quarterdeck in order to safeguard the security of his command. These inspections may consist of careful examinations of all packages and personnel entering or leaving his command provided that the intent of the search is based upon security considerations and not with a view toward prosecution. Routine inspections based upon military need have always been held proper, and it is only when such inspection is not routine that the guidelines of probable cause and reasonableness come into consideration. In some instances, however, rare and unusual concerns may dictate, as a matter of military necessity, a non-routine search of all persons entering or leaving a military installation as in the case of theft of classified military documents and sabotage. In this last case, the primary concern is not one of admissibility of evidence but rather the recapture of the documents or the prevention of sabotage. In neither case should the niceties of the Fourth Amendment be allowed to stand in the way of a pressing military objective.

## COMMAND AUTHORIZED SEARCHES

Once the determination is made that a search is required of premises protected by the Fourth Amendment, you will be faced with satisfying the requirements of probable cause and of properly describing the object of the search. In the civilian community, when the police suspect that a crime has been committed and that evidence can be found in a certain place, they go to a magistrate or local judge, who considers the evidence on which their beliefs are based and issues a search warrant if one is justified. In the military, this role of the magistrate is filled by the commanding officer of the unit. Determinations which the commanding officer must make before authorizing a search are discussed below.

### Jurisdiction

The property or person to be searched must be within the jurisdiction of the officer authorizing the search. As to *persons*, the commanding officer can authorize searches of any member of his own unit or of any other person subject to military law or the law of war who is found in the commanding officer's area (such as a member of another command who is found aboard the commanding officer's ship). As to places and property, the commanding officer can authorize searches of all property owned or controlled by the United States and assigned to or controlled by that commanding officer. (For example, a government tool box assigned to a civilian employee could be ordered searched by the commanding officer of the station to which the tool box belongs.) In addition, the commanding officer can order a search of any property owned or occupied by persons subject to military law and located on a military base or installation (such as a serviceman's privately owned vehicle which is parked on a military base).

In the United States, if the command desires to conduct a search off base of persons or property not within its jurisdiction, it can seek a warrant from a local civilian magistrate through the local law enforcement authorities or the U.S. Attorney's office. In foreign countries, although the command may have authority under military criminal law to authorize searches off base, for reasons of policy and diplomacy this is *not* done. The command should approach the local law enforcement authorities of the nation involved, and request that they conduct a search in accordance with the law of that country.

## Probable Cause

Once it is determined that the commanding officer has jurisdiction to order a search of the person or property involved, he must determine that there is "probable cause"; that is, a reasonable belief:

(1) That a crime has been committed; and
(2) That seizable items are located in the place or on the person to be searched.

Seizable items may include any of the following:

(1) Instrumentalities of a crime (for example, burglar's tools);
(2) Fruits of a crime (such as stolen goods);
(3) Contraband—property the mere possession of which is illegal (such as drugs);
(4) Evidence—any property which might reasonably aid in the apprehension or conviction of the perpetrator of a crime (such as the accused's blood-stained clothes in a murder case);
(5) When the search is of a person, items which may be used to resist apprehension (guns, knives, etc.).

Probable cause means a reasonable belief, not merely a suspicion. The probable cause standard does not require that there be proof beyond a reasonable doubt, but merely that after considering the facts presented the commanding officer reasonably believes that a crime has been committed, and that seizable items can be found in the place sought to be searched. For example, information that Jones possessed marijuana in his locker three days earlier would be too old to justify a search of Jones' locker. Reliable information that Jones smoked marijuana would not be cause to search Jones' locker. In fact, even apprehending Jones in possession of marijuana, without any additional information relating to the locker, would not be sufficient probable cause to search his locker. The information must be recent and must indicate that Jones has marijuana in the locker. The facts on which the commanding officer bases his opinion need not be within his personal knowledge; they may come from a reliable informer.

## Informers

If the commanding officer bases his determination of probable cause on information related to him by another person, two additional requirements must be met:

(1) The informer must present the *facts and circumstances* which could support a finding of probable cause, and not merely his own conclusions. For example, the commanding officer could not simply rely on an informer's statement that Smith stole Jones' watch and has it in his locker. He must find out the facts on which this conclusion is based, i.e., that the informant saw Smith take a watch from Jones' locker and hide it in his own locker.

(2) The commanding officer must have facts to support his determination that the *informer is reliable*. If the facts are brought to the commanding officer by someone in his own command, then he could conclude that the informer is reliable on the basis of his personal knowledge of the man. The commanding officer may assume that information related by a policeman (civilian or military) is reliable. Note that the informer must relate facts from *his* personal knowledge—if he merely relates facts secondhand from another informer then that informer's reliability must be determined as well. If the informer is not known by the commanding

officer (such as the typical informer or "tipster" used by the police), the commanding officer *must* have facts presented to him to show that the informer is reliable (e.g., that his tips have proved reliable in the past). If the commanding officer cannot determine that the informer is reliable (as in the case of an anonymous telephone tip), he may still be able to use the information as the basis for a search, but only if it is corroborated by other facts. For example, if an anonymous caller states that Brown is regularly stealing gear from the ship and hiding it in a certain place, and if Brown is seen to leave the ship often during working hours and go to the place named by the informer, the information could then be used to authorize a search.

**Particularity**

Both the Fourth Amendment and *MCM* require that in authorizing a search the commanding officer must specify the place or person to be searched and the things to be seized. A search cannot be merely a "fishing expedition," an indiscriminate search for any evidence of a crime. Therefore, the commanding officer should authorize a search of "Smith's locker and bunk for marijuana or marijuana cigarettes" and not merely "Search Smith's locker," or "Go to after berthing and look for marijuana." If in the course of a lawful search of the particular place or person which was the subject of the authorization some additional seizable item is found, which was not mentioned in the authorization, it may be seized and can be introduced at trial. In the example given above, if while searching Smith's locker for marijuana under a valid command authorization the searcher finds a loaded revolver (contraband), he may seize it, and it will be admissible in the prosecution of Smith for the possession of the weapon.

A partial exception to the requirement for particularity is the shakedown search. It consists of a search of a large area a short time after a crime has been committed in the hope of finding evidence which might otherwise be disposed of. An example would be a case where a thief who could not be identified was seen running into a certain barracks area. An immediate shakedown search of the particular barracks area for the stolen goods could be authorized. In addition to the usual requirement that there be probable cause, the area of the search must be reasonable under the circumstances of the particular case—that is, a reasonable belief that seizable items are present, that their exact location is unknown, and that there is reason to believe they could quickly be disposed of. The number of instances when such a search would be proper are extremely limited. Broad area searches are practically impossible to uphold in court, and should *never* be used when a more limited kind of search will suffice.

**CO's Delegation of Authority to Search**

Quite clearly there will be times when a search is required and the commanding officer is not available to authorize the search. To deal with such contingencies, the commanding officer may delegate his authority to search under the following conditions:

(1) The delegation of authority should be in writing.

(2) Delegation of the authority should be to a principal assistant; that is, the executive officer, command duty officer, or officer of the day.

(3) When delegating to a principal assistant, delegate to the office rather than to an individual by name, so that new delegations will not be required every time there's a transfer.

(4) The delegation of the authority should be limited so that it may be exercised *only in the absence or unavailability* of the commanding officer.

(5) The delegation should *not* be to one who exercises police function, such as the discipline officer or the shore patrol officer. Although such delegations may be made by letter or instruction, it might be well to include them in the ship or station organization manual.

**Recommended Procedure**

Neither *MCM* nor the *JAG Manual* requires that the authorization for search be in writing. Of one thing, however, you may be sure: if the authorization is not in writing, the search will be attacked in an effort to exclude any evidence produced by it, and the attack has a very good chance of succeeding. It is much easier to defend against such attacks, either pre- or post-trial, if everything is reduced to writing. Good administrative practice would seem to dictate the use of a written authorization. The format shown in figure 5-1 is taken from the *JAG Manual* and includes all necessary information. Remember, be specific and complete. It's much easier to complete the form correctly prior to the search than it is to re-try the case—several years after the crime and with your best evidence excluded.

## SEARCHES NOT REQUIRING CO AUTHORIZATION

Earlier in this chapter you were introduced to a number of "non-searches." There are, in addition, a number of bona fide searches that do not require authorization by the commanding officer.

### Consent Search

A search can lawfully be conducted with the consent of the person or owner of the property involved. Because the search rests on consent there is no probable cause requirement. However, it is essential that the consent be both *informed* and *voluntary*. Otherwise, the search will be unlawful and the evidence inadmissible. To aid in meeting this burden, the following warning should be given:

(1) The Article 31 *UCMJ* warning if the person to be searched or the owner of the property is a suspect;

(2) That the person desiring to search does not have authorization to conduct a search;

(3) That *no search will be conducted* at that time without his freely given consent.

A consent search is *invalid* if the person searching implies that he will search even if consent is not given. Consent is *invalid* if it is merely an acquiescence to military authority. Because of these problems, voluntary consent is difficult to prove if challenged at trial. It is, therefore, recommended that authorization be obtained whenever possible—rather than relying on consent to search. If the consent method is used, it is suggested that the person consenting be asked to sign an acknowledgement that he has been duly warned. A sample format is given in the *JAG Manual* and is reproduced as figure 5-2.

### Searches Incident to A Lawful Arrest

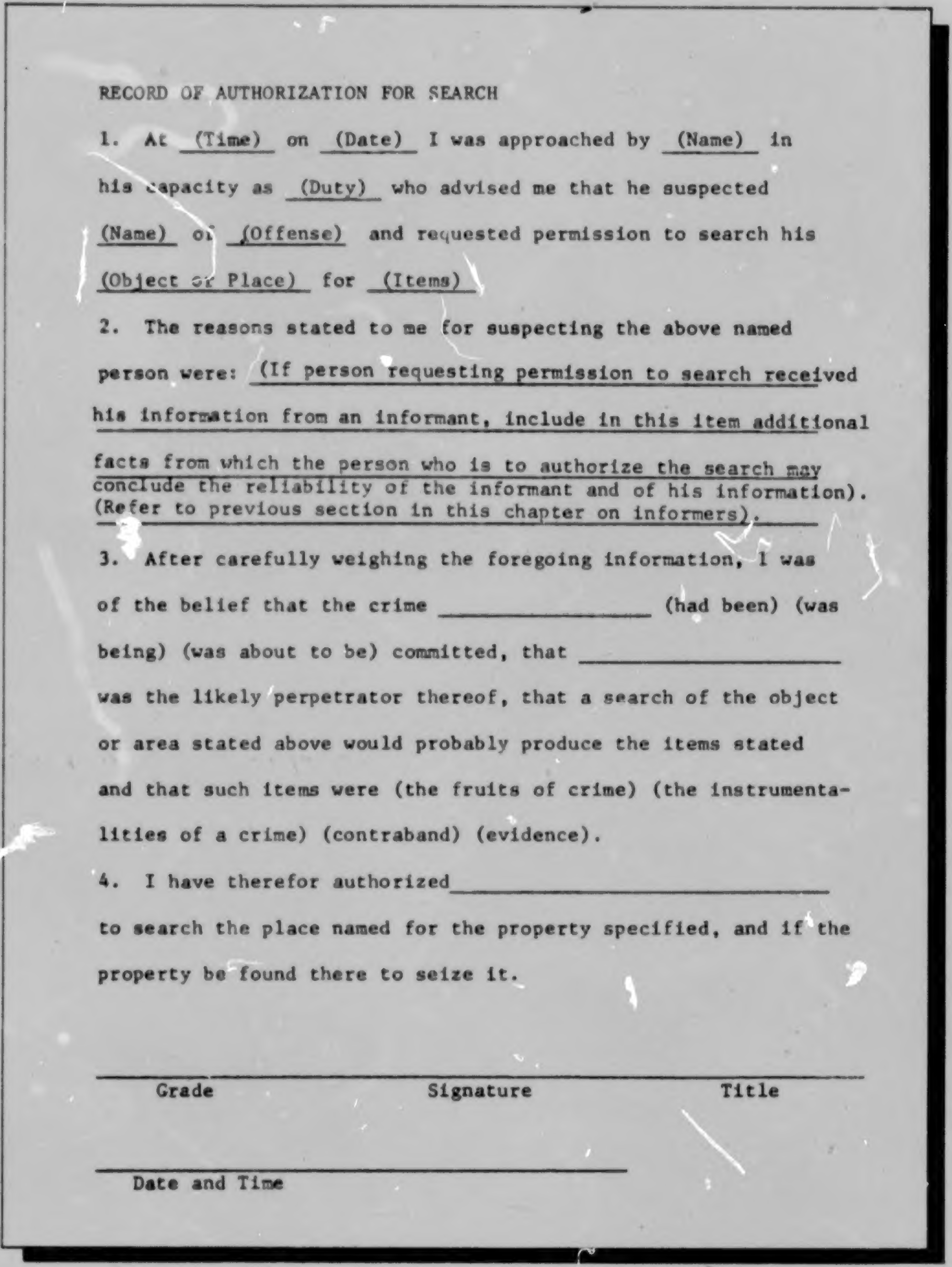
When a person is lawfully apprehended, a search may be made of his person, the clothing he is wearing, property in his immediate possession or control at the time of the apprehension, and of any area to which the apprehended person could actually reach at the time of his arrest (such as a desk drawer, if the suspect is sitting at a desk). To be "incident to" apprehension, the search must be conducted at the time of apprehension. (If a man was arrested at his desk and taken to the brig, the arresting officer could not later return and search the desk based on the apprehension.)

### Necessity Search

Under circumstances demanding immediate action to prevent the removal or disposal of seizable items, a search without command authorization may be lawful. This type of search requires a double finding of probable cause by the person conducting the search. First, he must determine that a crime has been committed, and that seizable items are present. These are the same determinations (discussed above) which the commanding officer would make if there were time to seek his authorization. Secondly, the person making the search must determine that immediate action is necessary to prevent removal or disposal (that is, that the seizable items would be disposed of before authorization to search could be obtained). This type of search is rare, and it should be used only in the most unusual and critical of circumstances.

## FRUIT OF THE POISONOUS TREE

Once it is determined that a search was unlawful, then not only is the evidence found in that search inadmissible, but any evidence found in a later search which was conducted because of the information learned in the first search, and



RECORD OF AUTHORIZATION FOR SEARCH

1. At (Time) on (Date) I was approached by (Name) in his capacity as (Duty) who advised me that he suspected (Name) of (Offense) and requested permission to search his (Object or Place) for (Items)

2. The reasons stated to me for suspecting the above named person were: (If person requesting permission to search received his information from an informant, include in this item additional facts from which the person who is to authorize the search may conclude the reliability of the informant and of his information). (Refer to previous section in this chapter on informers).

3. After carefully weighing the foregoing information, I was of the belief that the crime ________________ (had been) (was being) (was about to be) committed, that ____________________ was the likely perpetrator thereof, that a search of the object or area stated above would probably produce the items stated and that such items were (the fruits of crime) (the instrumentalities of a crime) (contraband) (evidence).

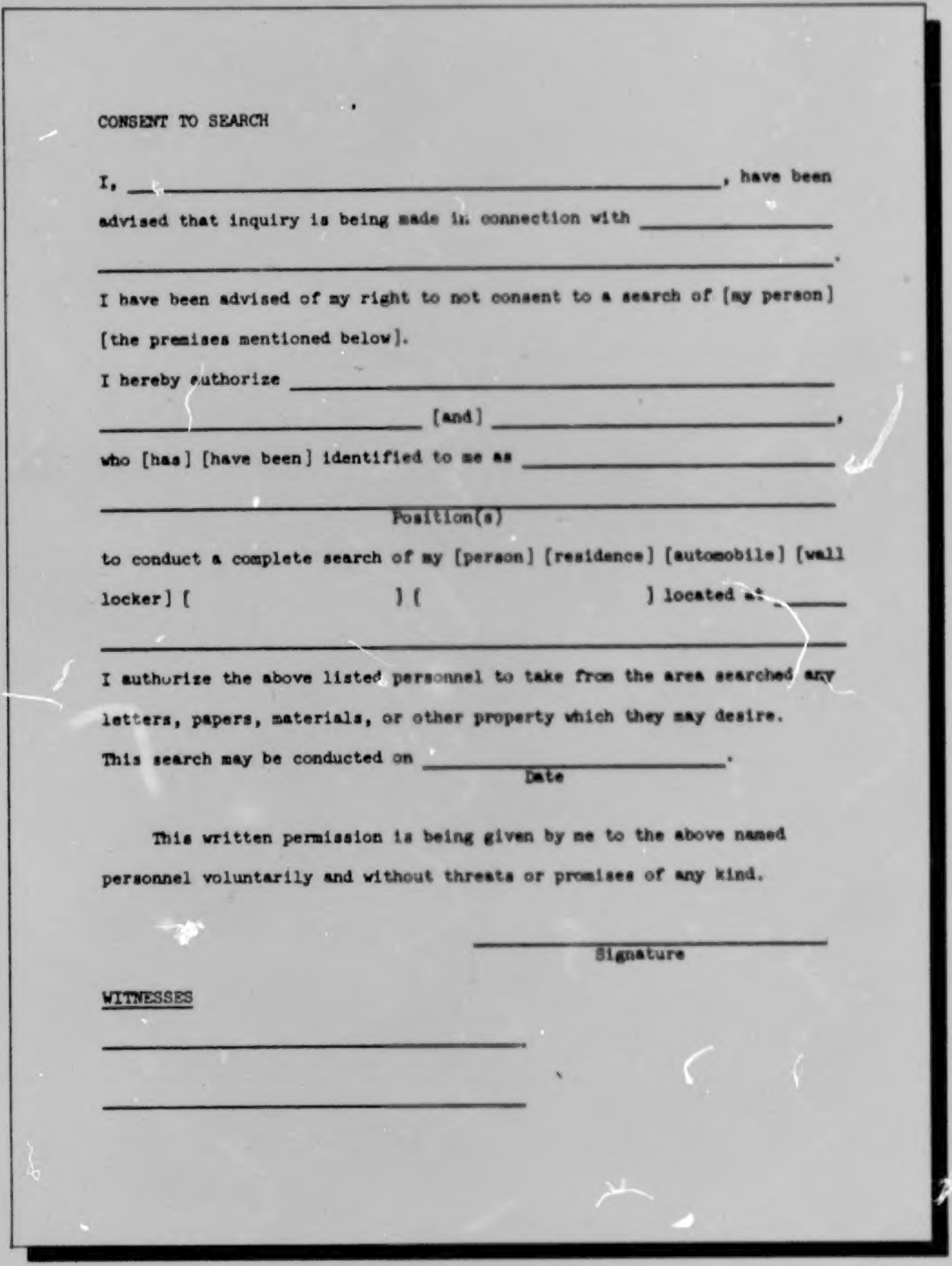
4. I have therefor authorized ______________________________ to search the place named for the property specified, and if the property be found there to seize it.

| | | |
|---|---|---|
| Grade | Signature | Title |

______________________________
Date and Time

192.23

Figure 5-1.—Record of Authorization for Search.



CONSENT TO SEARCH

I, ______________________________, have been advised that inquiry is being made in connection with ______________________________.

I have been advised of my right to not consent to a search of [my person] [the premises mentioned below].

I hereby authorize ______________________________ [and] ______________________________, who [has] [have been] identified to me as ______________________________

Position(s)

to conduct a complete search of my [person] [residence] [automobile] [wall locker] [ ] [ ] located at ______________________________

I authorize the above listed personnel to take from the area searched any letters, papers, materials, or other property which they may desire.

This search may be conducted on ______________________________.

Date

This written permission is being given by me to the above named personnel voluntarily and without threats or promises of any kind.

______________________________

Signature

WITNESSES

______________________________

______________________________

192.24

Figure 5-2.—Consent to Search.

any other evidence uncovered as a result of the unlawful search is also inadmissible. Thus if marijuana is found in a seabag which was searched on the basis of mere suspicion, the search is unlawful, and it can not be "cured" by putting the marijuana back and then authorizing a search in the proper manner. Likewise, if, as a result of an unlawful search of a locker, a map showing a cache of stolen goods is found, both the map and the stolen goods found by using it are inadmissible. To overcome the operation of this rule, the prosecution must meet the heavy burden of showing that the later search would have been conducted and would have been lawful without any of the information learned in the first search.

The fruit of the poisonous tree doctrine makes it essential that the command which investigates crimes in the first instance know and apply the proper rules of searches and seizures.

## Chapter 6

# NONJUDICIAL PUNISHMENT

From previous study you should have a general knowledge of mast procedures. As a Legalman, however, you will need a more complete knowledge in keeping with your new, and more extensive, duties. This chapter discusses the legal background for nonjudicial (mast) punishment, explains the procedures before, during, and after mast, and enumerates and defines the punishments that may be imposed and the effect the type of punishment has upon the processing of each case.

## JURISDICTION

Before any judicial or quasi-judicial body can validly act, it must have jurisdiction. That is to say, the body must have the legal right to exercise authority. We are concerned here with outside limits to the exercise of authority at mast by commanding officers and officers in charge.

### WHO MAY ADMINISTER NJP?

You will recall that Article 15 of the *UCMJ* empowers commanding officers to impose punishment for minor offenses upon offenders, both officers and enlisted members, without the intervention of a court-martial. The article likewise empowers officers in charge to impose nonjudicial punishment upon enlisted members assigned to the unit of which the officer is in charge. Similarly, the commander of a multiservice command, to whose command members of the naval service are assigned, may designate one or more naval units for the purpose of administering NJP. For each such unit, the commander must designate in writing a commissioned naval officer as commanding officer for the administration of discipline under Article 15. In addition, a flag or general officer in command may, with the express approval of the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate, delegate all or part of his powers under Article 15 to a senior officer of his staff who is eligible to succeed to command in the absence of the flag or general officer. Observe that *UCMJ* Article 43(c) requires that punishment be imposed within two years of the offense. If it is not imposed within the period, the offender may not later be punished for the offense. Before proceeding further, let us examine the offenses included in the minor offense category and determine when a member is subject to the jurisdiction of a commander who is authorized to administer NJP.

### WHO MAY BE PUNISHED?

The member who is to receive nonjudicial punishment must be a member, at the time the punishment is imposed, of the command of the commanding officer or of the unit of the officer in charge. A person is "of the command" or "of the unit" if he is assigned or attached to the command or unit. Note that a member may be subject to the NJP jurisdiction of more than one command, if, for instance, he is permanently assigned to one command and temporarily attached to another command while performing temporary additional duty.

Several special situations are addressed by *JAGMAN*, paragraph 0101(a)(3) and require mention here. If a member has been designated a party (see chapter 12 of this manual) before a fact-finding body, he remains "of the command" or "of the unit" to which he was assigned at the time of his designation as a party for the sole purpose of imposition of a letter of admonition or reprimand even though, for other purposes, he may have been assigned or attached to another command, before the letter was delivered to him. In all other cases when a member has been transferred between the time of the commission of an offense and the time NJP is to be imposed, the action should be referred to the new command or unit.

As you may imagine, a special procedure is involved in the imposition of NJP on reservists. If the period of active duty for training or of inactive duty training (drill) terminated before imposition of punishment, punishment may occur after the termination of the training period, *even at a time when the reservist is not subject to the UCMJ*, provided, however, that all aspects of the NJP procedure which require the presence of the accused (see later discussion in this chapter) have been concluded prior to the termination of the training period. In very much the same vein, a reservist may be subjected to NJP if all procedural aspects requiring his presence are conducted during a training period subsequent to the period during which the alleged offense was committed, unless there has been some intervening discharge or equivalent change of status.

## WHAT ARE MINOR OFFENSES?

Conduct may not be punished under Article 15 unless the act or omission constitutes an offense under the punitive articles of the *UCMJ*. After it is determined that an offense has been committed, the nature of the offense and the circumstances surrounding its commission must be examined to determine whether it is "minor." Some offenses, by their very nature, are clearly *not* minor. Three obvious examples are murder, mutiny, and desertion in time of war. Nor does the term "minor offense" include misconduct which, if tried by a GCM, could be punished by a dishonorable discharge or confinement for more than one year. Conversely, some misconduct is so inconsequential that everyone would consider it "minor." Improper wearing of the uniform is an example. If a general rule can be stated, it is that the term "minor" includes misconduct not involving any greater degree of criminality than that involved in the average case tried by SCM.

It is immediately apparent that the rule, when mechanically applied, does not determine which cases will be heard at captain's mast. Real world cases must be decided by the commanding officer, on the advice of a judge advocate, on a case-by-case basis. It is now time to examine in detail your role in a mast proceeding.

## PRE-MAST DUTIES OF A LEGALMAN

Your office can receive notification that an offense has been committed in a variety of ways–a shore patrol report, a verbal complaint by a victim, a local report chit, to suggest a few. Except when serious crimes are involved (which will be discussed in Chapter 7 of this rate training manual), charges will be reduced to writing on the Report and Disposition of Offense(s), NAVPERS 1626/7, and processed in the manner prescribed by the form itself. See figure 6-1.

The NAVPERS 1626/7 is a one-sheet (back and front) form. It is NOT a substitute for a charge sheet; it is NOT a substitute for the pretrial investigation required by Article 32. However, so long as the offense remains in the category of cases to be handled by the commanding officer at mast, this one form satisfies most paperwork requirements of a mast proceeding. Among the functions it serves are:

(1) it reports the offense(s),

(2) it records that the accused has been advised of his rights under Article 31,

(3) it records any pre-mast restraint,

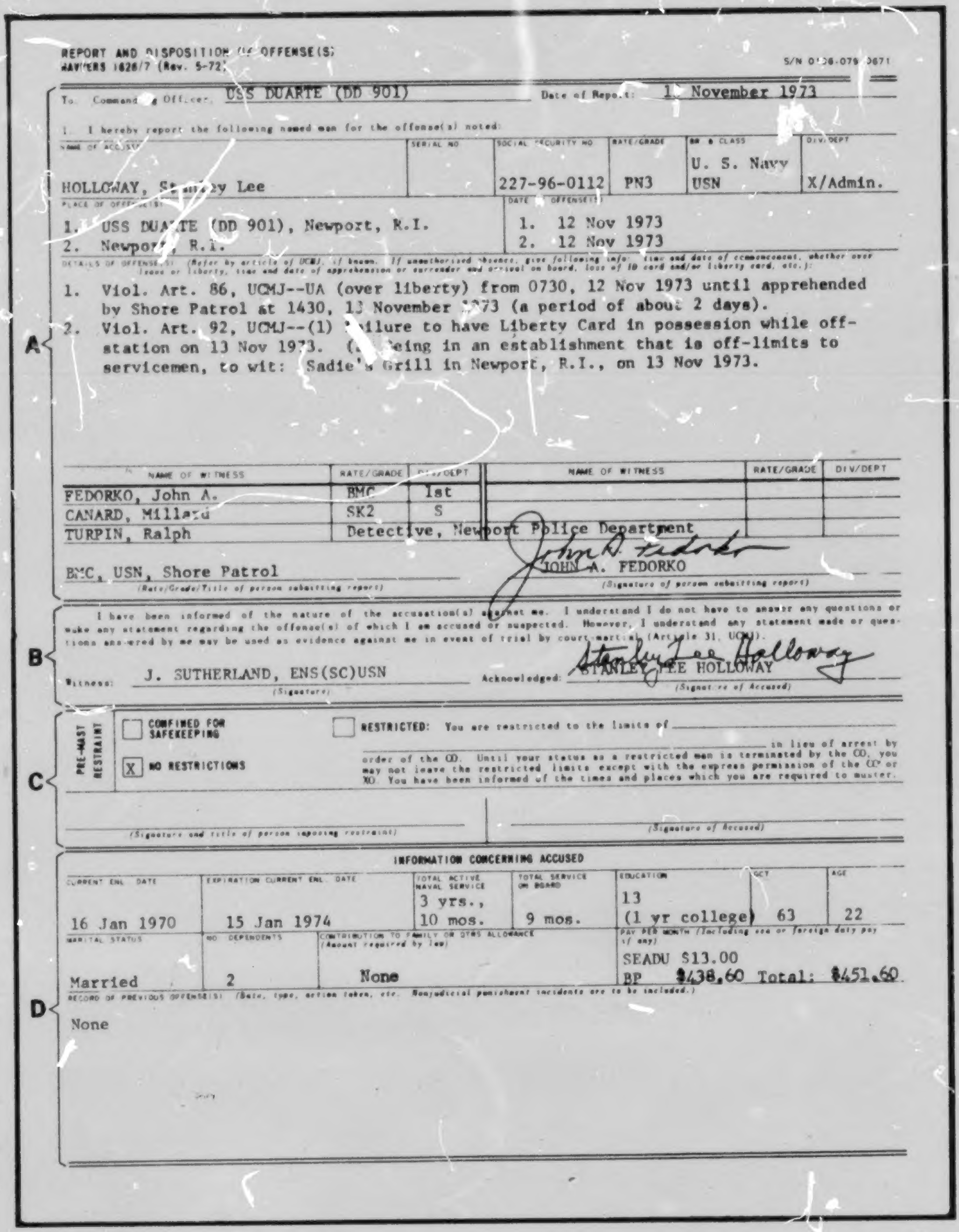
(4) it serves as a preliminary inquiry report,

(5) it records the action of the XO at screening mast,

(6) it records that the accused has been advised of his rights to refuse NJP (if he has that right under the circumstances of the case),

(7) it shows the action of the CO at mast,

(8) it records that the accused's appeal rights have been explained to him, and



REPORT AND DISPOSITION OF OFFENSE(S)
NAVPERS 1626/7 (Rev. 5-72)

S/N 0106-079-0671

To: Commanding Officer: USS DUARTE (DD 901)    Date of Report: 1[illegible] November 1973

1. I hereby report the following named man for the offense(s) noted:

| NAME OF ACCUSED | SERIAL NO | SOCIAL SECURITY NO | RATE/GRADE | BR & CLASS | DIV/DEPT |
|---|---|---|---|---|---|
| HOLLOWAY, Stanley Lee | | 227-96-0112 | PN3 | U. S. Navy<br>USN | X/Admin. |

| PLACE OF OFFENSE(S) | DATE OF OFFENSE(S) |
|---|---|
| 1. USS DUARTE (DD 901), Newport, R.I.<br>2. Newport, R.I. | 1. 12 Nov 1973<br>2. 12 Nov 1973 |

DETAILS OF OFFENSE(S): (Refer by article of UCMJ, if known. If unauthorized absence, give following info: time and date of commencement, whether over leave or liberty, time and date of apprehension or surrender and arrival on board, loss of ID card and/or liberty card, etc.):

A

1. Viol. Art. 86, UCMJ--UA (over liberty) from 0730, 12 Nov 1973 until apprehended by Shore Patrol at 1430, 13 November 1973 (a period of about 2 days).
2. Viol. Art. 92, UCMJ--(1) Failure to have Liberty Card in possession while off-station on 13 Nov 1973. (2) Being in an establishment that is off-limits to servicemen, to wit: Sadie's Grill in Newport, R.I., on 13 Nov 1973.

| NAME OF WITNESS | RATE/GRADE | DIV/DEPT | NAME OF WITNESS | RATE/GRADE | DIV/DEPT |
|---|---|---|---|---|---|
| FEDORKO, John A. | BMC | 1st | | | |
| CANARD, Millard | SK2 | S | | | |
| TURPIN, Ralph | Detective, Newport Police Department | | | | |

BMC, USN, Shore Patrol
(Rate/Grade/Title of person submitting report)

John A. Fedorko
JOHN A. FEDORKO
(Signature of person submitting report)

B

I have been informed of the nature of the accusation(s) against me. I understand I do not have to answer any questions or make any statement regarding the offense(s) of which I am accused or suspected. However, I understand any statement made or questions answered by me may be used as evidence against me in event of trial by court-martial (Article 31, UCMJ).

Witness: J. SUTHERLAND, ENS(SC)USN
(Signature)

Acknowledged: Stanley Lee Holloway
STANLEY LEE HOLLOWAY
(Signature of Accused)

C

PRE-MAST RESTRAINT

☐ CONFINED FOR SAFEKEEPING

☒ NO RESTRICTIONS

☐ RESTRICTED: You are restricted to the limits of ______ in lieu of arrest by order of the CO. Until your status as a restricted man is terminated by the CO, you may not leave the restricted limits except with the express permission of the CO or XO. You have been informed of the times and places which you are required to muster.

(Signature and title of person imposing restraint)

(Signature of Accused)

D

INFORMATION CONCERNING ACCUSED

| CURRENT ENL. DATE | EXPIRATION CURRENT ENL. DATE | TOTAL ACTIVE NAVAL SERVICE | TOTAL SERVICE ON BOARD | EDUCATION | GCT | AGE |
|---|---|---|---|---|---|---|
| 16 Jan 1970 | 15 Jan 1974 | 3 yrs.,<br>10 mos. | 9 mos. | 13<br>(1 yr college) | 63 | 22 |

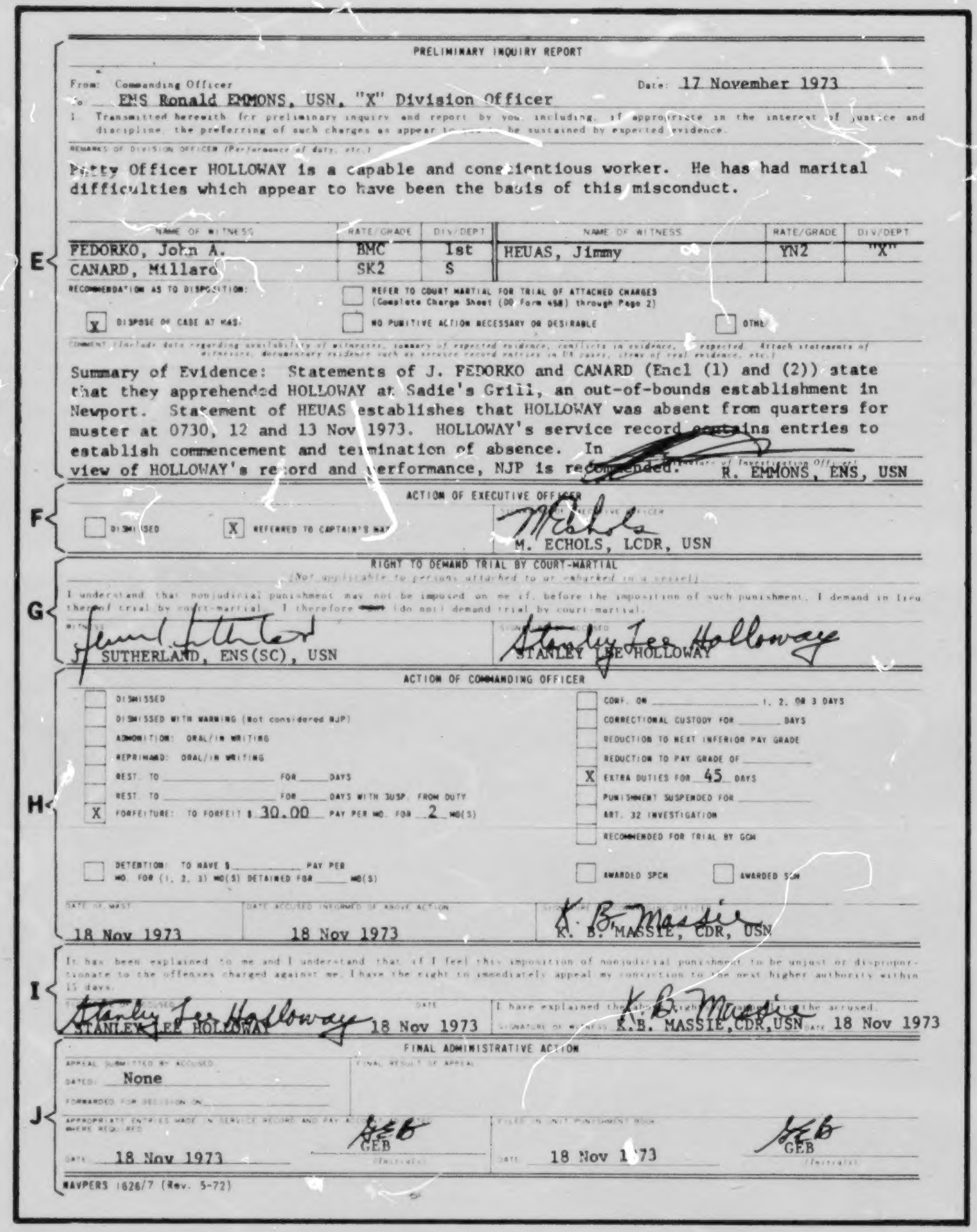
| MARITAL STATUS | NO. DEPENDENTS | CONTRIBUTION TO FAMILY OR QTRS ALLOWANCE (Amount required by law) | PAY PER MONTH (Including sea or foreign duty pay if any) |
|---|---|---|---|
| Married | 2 | None | SEADU $13.00<br>BP $438.60 Total: $451.60 |

RECORD OF PREVIOUS OFFENSE(S) (Date, type, action taken, etc. Nonjudicial punishment incidents are to be included.)

None

192.25.1

Figure 6-1.—Report and Disposition of Offenses, NAVPERS 1626/7.



PRELIMINARY INQUIRY REPORT

From: Commanding Officer
Date: 17 November 1973

To: ENS Ronald EMMONS, USN, "X" Division Officer

1. Transmitted herewith for preliminary inquiry and report by you, including, if appropriate in the interest of justice and discipline, the preferring of such charges as appear to you to be sustained by expected evidence.

REMARKS OF DIVISION OFFICER (Performance of duty, etc.)

Petty Officer HOLLOWAY is a capable and conscientious worker. He has had marital difficulties which appear to have been the basis of this misconduct.

| NAME OF WITNESS | RATE/GRADE | DIV/DEPT | NAME OF WITNESS | RATE/GRADE | DIV/DEPT |
|---|---|---|---|---|---|
| FEDORKO, John A. | BMC | 1st | HEUAS, Jimmy | YN2 | "X" |
| CANARD, Millard | SK2 | S | | | |

RECOMMENDATION AS TO DISPOSITION:

☐ REFER TO COURT MARTIAL FOR TRIAL OF ATTACHED CHARGES (Complete Charge Sheet (DD Form 458) through Page 2)

☒ DISPOSE OF CASE AT MAST

☐ NO PUNITIVE ACTION NECESSARY OR DESIRABLE

☐ OTHER

COMMENT (Include data regarding availability of witnesses, summary of expected evidence, conflicts in evidence, if expected. Attach statements of witnesses, documentary evidence such as service record entries in UA cases, items of real evidence, etc.)

Summary of Evidence: Statements of J. FEDORKO and CANARD (Encl (1) and (2)) state that they apprehended HOLLOWAY at Sadie's Grill, an out-of-bounds establishment in Newport. Statement of HEUAS establishes that HOLLOWAY was absent from quarters for muster at 0730, 12 and 13 Nov 1973. HOLLOWAY's service record contains entries to establish commencement and termination of absence. In view of HOLLOWAY's record and performance, NJP is recommended.

(Signature of Investigating Officer)
R. EMMONS, ENS, USN

ACTION OF EXECUTIVE OFFICER

☐ DISMISSED

☒ REFERRED TO CAPTAIN'S MAST

SIGNATURE OF EXECUTIVE OFFICER
M Echols
M. ECHOLS, LCDR, USN

RIGHT TO DEMAND TRIAL BY COURT-MARTIAL

(Not applicable to persons attached to or embarked in a vessel)

I understand that nonjudicial punishment may not be imposed on me if, before the imposition of such punishment, I demand in lieu thereof trial by court-martial. I therefore [illegible] (do not) demand trial by court-martial.

WITNESS
J. Sutherland
J. SUTHERLAND, ENS(SC), USN

SIGNATURE OF ACCUSED
Stanley Lee Holloway
STANLEY LEE HOLLOWAY

ACTION OF COMMANDING OFFICER

☐ DISMISSED

☐ DISMISSED WITH WARNING (Not considered NJP)

☐ ADMONITION: ORAL/IN WRITING

☐ REPRIMAND: ORAL/IN WRITING

☐ REST. TO __________ FOR _____ DAYS

☐ REST. TO __________ FOR _____ DAYS WITH SUSP. FROM DUTY

☒ FORFEITURE: TO FORFEIT $ 30.00 PAY PER MO. FOR 2 MO(S)

☐ DETENTION: TO HAVE $ ______ PAY PER MO. FOR (1, 2, 3) MO(S) DETAINED FOR _____ MO(S)

☐ CONF. ON __________ 1, 2, OR 3 DAYS

☐ CORRECTIONAL CUSTODY FOR _____ DAYS

☐ REDUCTION TO NEXT INFERIOR PAY GRADE

☐ REDUCTION TO PAY GRADE OF ______

☒ EXTRA DUTIES FOR 45 DAYS

☐ PUNISHMENT SUSPENDED FOR ______

☐ ART. 32 INVESTIGATION

☐ RECOMMENDED FOR TRIAL BY GCM

☐ AWARDED SPCM

☐ AWARDED SCM

| | | |
|---|---|---|
| DATE OF MAST<br>18 Nov 1973 | DATE ACCUSED INFORMED OF ABOVE ACTION<br>18 Nov 1973 | SIGNATURE OF COMMANDING OFFICER<br>K. B. Massie<br>K. B. MASSIE, CDR, USN |

It has been explained to me and I understand that if I feel this imposition of nonjudicial punishment to be unjust or disproportionate to the offenses charged against me, I have the right to immediately appeal my conviction to the next higher authority within 15 days.

SIGNATURE OF ACCUSED
Stanley Lee Holloway
STANLEY LEE HOLLOWAY
DATE 18 Nov 1973

I have explained the above rights of appeal to the accused.
K. B. Massie
SIGNATURE OF WITNESS K.B. MASSIE, CDR, USN DATE 18 Nov 1973

FINAL ADMINISTRATIVE ACTION

APPEAL SUBMITTED BY ACCUSED
DATED: None
FORWARDED FOR DECISION ON ______

FINAL RESULT OF APPEAL

APPROPRIATE ENTRIES MADE IN SERVICE RECORD AND PAY ACCOUNT ADJUSTED WHERE REQUIRED
DATE 18 Nov 1973
GEB
GEB
(Initials)

FILED IN UNIT PUNISHMENT BOOK
DATE 18 Nov 1973
GEB
GEB
(Initials)

NAVPERS 1626/7 (Rev. 5-72)

192.25.2

Figure 6-1.–Report and Disposition of Offenses, NAVPERS 1626/7–(Continued).

(9) it becomes a permanent record of the case in the Unit Punishment Book. No additional record is necessary such as 3 X 5 cards, mast log book, etc. This only duplicates information in the Unit Punishment Book.

Remember, however, that NAVPERS 1626/7 does not include all of the required premast advice that must be given the accused in accordance with Sec. 0101 of the *JAG Manual.*

## REVIEWING THE REPORT CHIT

Regardless of how the commission of a minor offense is brought to your attention, you will probably need to prepare the smooth NAVPERS 1626/7. See Section A of figure 6-1. The report is always addressed to the officer in charge or commanding officer of the accused. If the offender has violated more than one article of the *UCMJ,* the separate offenses are identified by Arabic numerals in the section marked "Details of the Offense." If the offender has violated a single article more than once, successive violations are identified by Arabic numerals in parentheses. In each instance, be sure to give sufficient details to state an offense and give the number of the article of the *UCMJ* violated. Use numerals in the blocks marked "Place of Offense(s)" and "Date of Offense(s)" which compare to those used in identifying the offenses in "Details of Offense(s)."

Military witnesses to the offense are listed in order of seniority, followed by civilian witnesses, if any. If the witness is attached to the same command as the offender, it is only necessary to give his division or department. If he is attached to another command, identify that command completely. If he is a civilian, give his complete address—business and home, if available. Finally, be sure to obtain the signature of the person placing the accused on report.

## PRE-MAST ADVICE TO ACCUSED

Within a reasonable time of the report of an offense, the officer contemplating imposing nonjudicial punishment upon an accused must ensure that the accused is fully advised concerning his legal rights associated with possible imposition of nonjudicial punishment. Failure to properly advise the accused in this regard may render any subsequent nonjudicial punishment invalid.

Details concerning required pre-mast advice to an accused are contained in Sec. 0101d of the *JAG Manual.* The advice must include the following, as a minimum: (1) the offense(s) that the accused is suspected of having committed; (2) that the commanding officer is contemplating mast or office hours for the alleged offense(s); (3) that, if the accused is not attached to or embarked in a vessel, he has a right to demand court-martial in lieu of mast or office hours; (4) that, if the accused accepts mast or office hours, he will receive a hearing at which time he will be accorded the following rights: To be present before the officer conducting the hearing; to have his rights under Article 31b, *UCMJ* explained to him; to be advised of the offense(s) of which he is suspected; to be present at the presentation of all information against him either by testimony of a witness in person or by the receipt of his written statement(s), copies of which are furnished to the accused; to have available for his inspection all items of information in the nature of physical or documentary evidence to be considered by the officer conducting the hearing; to have full opportunity to present any matter in mitigation, extenuation, or defense of the offense(s) of which he is suspected; and to be accompanied at the hearing by a personal representative to speak in his behalf, provided by him, who may, but need not be a lawyer; (5) that, if punishment is imposed, he has a right of appeal; and (6) that, if he demands trial by court-martial, the charges against him may be referred to court-martial.

There are no pre-set forms that can or must be used to acknowledge receipt by the accused of the above pre-mast advice. In some cases forms for acknowledgement of pre-mast advice may be established by local practice. On the other hand, some of the above pre-mast advice is reflected on the first page of the NAVPERS 1626/7. For example, there is a section of the NAVPERS 1626/7 for acknowledgement by the accused that he has been advised of the nature of the offense(s) charged against him and of his right to remain silent under Article 31b. See figure 6-1. In any event, where provisions are made for acknowledgement in writing by an accused of pre-mast advice, it is important that the accused acknowledge that he has received such warnings and that this acknowledgement be witnessed. If the accused refuses to sign an acknowledgement, have the witness attest to the giving of the warnings and the refusal of the accused to acknowledge. In such a case, it is probably good procedure to use as a witness someone who is not connected with disciplinary administration.

## PRE-MAST RESTRAINT

Reason would seem to dictate that no physical restraint of accused persons be required in the vast majority of instances in which offenders are charged with minor offenses. There may, however, be extreme cases (a chronic UA offender, for example) where some type of pre-mast restraint is indicated. A ship or station regulation will establish local guidelines for making the decision–and will specify which officials have the authority to make the decision. If confinement is deemed necessary, a confinement order (see chapter 7 of this manual) is required in addition to checking the "Confinement for Safekeeping" block in Section C of figure 6-1. If restriction is imposed, the limits of the restriction should be carefully delineated. The authorized person who imposes the restraint and the accused should sign in the appropriate places. In the normal case where no restraint is imposed, the "No Restrictions" block is checked and no signatures are needed.

## INFORMATION CONCERNING ACCUSED

You will go to the service record of the accused and to the disbursing office to get data needed to compute "INFORMATION CONCERNING ACCUSED," which is shown in Section D of figure 6-1. In the block titled "Contribution to Family or Quarters Allowance," enter "None." In the block "Record of Previous Offenses," list offenses of the current enlistment in chronological order; earliest offense first, latest offense last.

## PRE-MAST SCREENINGS

After you have completed the front of the NAVPERS 1626/7, the case must touch two more bases before it is ready for hearing by the commanding officer. It is referred to an officer for a preliminary inquiry after which it will be screened by the executive officer.

### Preliminary Inquiry

At small commands, cases will be referred almost automatically to division officers for the preliminary inquiry. At large commands the discipline officer or the legal officer will be delegated authority to appoint the preliminary inquiry officer (PIO). It is not the job of the PIO to develop a case against the accused. Rather, he is to collect all available facts concerning the offense itself and concerning the background of the accused. The PIO completes Section E of figure 6-1 by:

(1) inserting a short resume of the division officer's opinion of the accused,
(2) listing the names of the witnesses whose presence the PIO thinks is necessary to dispose of the case at mast,
(3) recommending disposition of the case, and
(4) summarizing the evidence which supports the recommendation.

The recommendation of the PIO is not binding on the commanding officer.

### XO's Screening

The XO may screen by holding an informal hearing, or he may merely review the record of the accused and the report chit. See Section F of figure 6-1. If he has been given the power by the commanding officer, he may dismiss the case, but he may NEVER impose punishment.

It is at XO's screening mast that the accused is advised again of his right to refuse NJP and demand a trial by court-martial. See Section G of figure 6-1. Observe that Article 15 does not give this right to persons attached to vessels. Observe, also, that the accused may elect at any time prior to imposition of NJP to refuse it and demand a court-martial. It is, then, possible for a man to elect not to demand trial at XO's mast but later at captain's mast, at any time before punishment is imposed, to demand a court-martial. Be sure to get the witnessed signature of the accused as shown in Section G of figure 6-1. If he refuses to sign, get the witness' attestation as outlined in the discussion of Article 31, above.

## THE NJP HEARING

Nowhere is there a prescribed procedure for the conduct of captain's mast. In practice the tone of the hearing will depend upon the preference of the officer conducting the hearing. Although the formal rules of evidence do not apply, there must be sufficient evidence to "convince" the CO. There are a number of mandatory provisions concerning the hearing which are discussed below.

### ESSENTIAL PARTIES

Mast must be conducted by an officer who is empowered to impose NJP. The accused must be present except in two extraordinary cases: (1) if there is a distant outlying subunit, the commanding officer may designate an officer at the subunit to hold the hearing and to submit a report of the hearing to the commanding officer who makes his determination based on the report; and (2) the record of a court of inquiry or other formal fact finding body, before which the accused received all rights of a party, may be used instead of having a hearing. Witnesses need not be present. If they are not present, their written statements are acceptable as evidence, but the accused must be furnished a copy of any such written statements.

### MANDATORY MAST ACTIONS

Even though the accused may have been earlier advised of the charges, of his rights under Article 31, and of his right to refuse NJP (if not attached to or embarked in a vessel), each mast hearing should commence with a recitation of these by the commanding officer and an acknowledgement by the accused that he understands his rights. Information against the accused must be by testimony of witnesses or by their written statements. All items of physical or documentary evidence which the commanding officer considers must be made available to the accused, and the accused must be afforded a full opportunity to present any matters in mitigation, extenuation, or defense of the suspected offense.

The accused has a right to be accompanied at his Article 15 hearing by a personal representative to advise him and to make a statement on his behalf. It is the responsibility of the accused to arrange for the presence of such a representative if he wishes one. Such a representative may, but need not, be a lawyer.

### CO'S ACTIONS

There is a graduated course of actions available to the commanding officer. See Section H of figure 6-1. He may take no action if there is "good cause" by postponing the action pending further investigation. He may determine that the accused has not committed the offense, in which case he will dismiss the charges. The CO may determine that the accused has committed the offense but determine that punishment is inappropriate. In this case he will dismiss with a warning, which is not considered "punishment" within the purview of Article 15. Similarly, the CO may issue a nonpunitive admonition or reprimand (this is to be distinguished from the punitive letter of censure to be discussed later). The next most serious action is to award one or more of the punishments which are discussed later in this chapter.

The CO may determine that the case is too serious for him to handle at mast, a course which offers its own set of determinations. He may refer the case to an SCM or SPCM if he is empowered to convene such a court. Finally, if he is empowered to convene summary courts-martial or, of course, special or general courts-martial, he may refer the case to a pre-trial investigation in accordance with Article 32, if the case is serious enough to consider a GCM.

## PUNISHMENT

If the commanding officer is convinced by the evidence that the accused is guilty of the offense and if he deems punishment appropriate, he has wide latitude under paragraph 131 of *MCM* to impose punishment.

## TYPES OF PUNISHMENTS

Paragraph 131 specifies nine types of punishments which may, under appropriate circumstances, be imposed at mast. There are limitations which are based upon the commanding officer's rank and the status of the offender. Figure 6-2 is a tabular representation of these limitations and should be referred to as you read the discussion of individual punishments that follows.

### Restriction

Restriction is the least severe form of deprivation of liberty. It involves moral rather than physical restraint. Generally, the restricted member will continue to perform his military duties, and he may be required to report to a specified place if "it is considered reasonably necessary to ensure that the punishment is properly executed," (*MCM*, para. 131 (c)(2)). Both officers and enlisted members may be restricted.

### Arrest in Quarters

This punishment also involves moral rather than physical restraint and may be imposed only on commissioned or warrant officers by flag or general officers in command or an officer exercising GCM authority. The limits of the restriction may be broader than the specific living quarters of the offender, but if they are not specifically broadened the limits of the restriction are those of the living quarters. An officer who is arrested in quarters may be required to perform certain duties, but Article 0811 of *Navy Regulations* prohibits the exercise of military authority by such an officer over any person who might otherwise be subordinate to him.

### Correctional Custody

Correctional custody is the physical restraint of persons during duty or nonduty hours, or both, and may be awarded only to non-rated men. It may include extra duties, fatigue duties, or hard labor. SECNAVINST 1640.7, which contains Navy policy relative to the serving of the punishment, imposes strict conditions on the housing and rehabilitation of persons in correctional custody. Note that time served in correctional custody is NOT lost time.

### Confinement on Bread and Water or Diminished Rations

This punishment may be imposed only on non-rated men attached to or embarked in vessels. Maximum duration is three days, and the conditions of paragraph 109.5 of the *Corrections Manual*, SECNAVINST, 1640.9, must be met—all of which means that the punishment is only very rarely encountered. Before this punishment may be imposed, and before execution of the punishment, the medical officer must issue a signed statement that, in his opinion, no serious injury will result to the health of the person punished.

### Admonition and Reprimand

In increasing order of severity, there are two degrees of punitive censure, namely, admonition and reprimand. When imposed upon enlisted personnel punitive censure may be by either oral or written communication but must be written communication when imposed upon commissioned and warrant officers. See *JAGMAN*, Sec. 0102 for a discussion of letters of censure.

### Reduction in Grade

A reduction in grade or "bust" is considered the most severe form of NJP. A member may be reduced only one grade as a result of a single mast appearance. Navy members E-7 and above and Marine Corps members E-6 and above may not be reduced by commanding officers at NJP.

### Extra Duties

Involved here is the performance by enlisted members of duties in addition to those normally assigned. Extra duties normally should not exceed two hours per day, after which the offender is granted liberty—unless, of course, his

LIMITS OF PUNISHMENTS UNDER ARTICLE 15, UCMJ
(NON-JUDICIAL PUNISHMENT)

| Imposed By | Imposed on | Confinement on B&W or Dim Rats | Correctional Custody | Arrest in Quarters | Forfeiture | Reduction | Extra Duties | Restriction to Limits | Detention of Pay | Reprimand or Admonition |
|---|---|---|---|---|---|---|---|---|---|---|
| General Ofcrs in Command | Ofcrs | No | No | 30 days | 1/2 one mo for 2 mos | No | No | 60 days | 1/2 one mo for 3 mos. | Yes |
| | E-4 to E-9 | No | No | No | 1/2 one mo for 2 mos. | 1 Grade (Note) | 45 days | 60 days | 1/2 one mo for 3 mos. | Yes |
| | E-1 to E-3 | 3 days | 30 days | No | 1/2 one mo for 2 mos | 1 Grade | 45 days | 60 days | 1/2 one mo. for 3 mos. | Yes |
| O-4 TO O-6 | Ofcrs | No | No | No | No | No | No | 30 days | No | Yes |
| | E-4 to E-9 | No | No | No | 1/2 one mo for 2 mos | 1 Grade (Note) | 45 days | 60 days | 1/2 one mo. for 3 mos. | Yes |
| | E-1 to E-3 | 3 days | 30 days | No | 1/2 one mo. for 2 mos. | 1 Grade | 45 days | 60 days | 1/2 one mo. for 3 mos. | Yes |
| O-3 below and OinC's | Ofcrs | No | No | No | No | No | No | 15 days | No | Yes |
| | E-4 to E-9 | No | No | No | 7 days | 1 Grade (Note) | 14 days | 14 days | 14 days | Yes |
| | E-1 to E-3 | 3 days | 7 days | No | 7 days | 1 Grade | 14 days | 14 days | 14 days | Yes |

Note: E-7 and above in the Navy and E-6 and above in the Marine Corps may not be reduced in grade by their CO at Mast.

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Figure 6-2.—Table of Maximum Punishments.

liberty has been otherwise curtailed. Extra duties are not performed on Sundays, although Sundays count in computing the number of days worked. Note that extra duty is performed on holidays.

### Forfeiture of Pay

A forfeiture of pay involves the permanent loss of entitlement to forfeited pay. Only basic pay and sea or foreign duty pay are subject to forfeiture. Although the maximum forfeiture shown in figure 6-2 is given in a fraction of months' or days' pay, the punishment should be expressed in a specific dollar amount (i.e., $30 per month for two months). If the punishment involves a reduction in rate, whether or not suspended, the pay rates applicable to the reduced rate are the basis of the forfeiture.

Example: YN3 Barnes, with over four years' service for pay purposes, is on sea duty and has a $200 D allotment sent to his wife monthly. At mast, he is busted to E-3. Assuming that the correct rate of pay for E-3 (over 4) is $430.50 and sea pay for an E-3 is $9.00, the maximum amount subject to forfeiture by a C.O. who is a LCDR or higher is computed as follows:

| | |
|---|---|
| $430.50 | (basic pay) |
| 9.00 | (sea pay) |
| $439.50 | TOTAL |

Since a commanding officer, LCDR or higher, may not award forfeiture of more than half of member's pay, this figure must be divided by 2 to equal $219.75. Since *MCM*, paragraph 131(c)(8) requires the use of even dollar amounts, the maximum subject to forfeiture is $219.00 per month for two months.

### Detention of Pay

A detention of pay is much less severe than the forfeiture because the member will get the detained money back at the end of the period of detention. This period may not exceed one year and may, in no case, extend beyond the expiration of the member's current enlistment. Only sea or foreign duty pay and basic pay may be detained, and the maximum amount subject to detention is computed in the same fashion as shown for a forfeiture.

### Fines

A fine is not an authorized punishment at NJP and must not be awarded.

## MAXIMUMS

The maximum punishments shown in figure 6-2 are limitations for each mast appearance rather than for each offense.

These limitations may not be avoided by hearing one offense at a time, because all known offenses of which the accused is suspected must be considered at one mast hearing.

## COMBINATION AND APPORTIONMENT

It is clear that punishments may be made more onerous by awarding them in combination with other punishments. To ensure adherence to the spirit of maximum punishments, there are rules governing the combination and apportionment of the various punishments.

### Consecutive Punishments

Consecutive punishments are those that are served one after the other. Awards of correctional custody, extra duties, arrest in quarters, and restriction, when served one after the other, may not be awarded in the maximum shown in figure 6-2. Rather they must be apportioned according to the Table of Equivalent Nonjudicial Punishments, figure 6-3. One day of correctional custody equals 1 1/2 days' extra duty or 2 days' restriction. One day of forfeiture of pay equals 1 1/2 days of detention of pay.

Example: A LCDR/MAJ or above may impose a maximum of 30 days' correctional custody. If he were to choose to award correctional custody, extra duty, and restriction consecutively, the types of restraint will be served one after the other, beginning with the most severe. Assume that he chooses to break down his prime factor (the most serious restraint) in even amounts.

| AMT OF CC USED AS PRIME FACTOR | | AMT OF EQUIVALENT PUNISHMENTS |
|---|---|---|
| 10 days CC | = | 10 days CC |
| 10 days CC | = | 15 days ED |
| 10 days CC | = | 20 days R |

If a member were punished as assumed in this example and his punishment began on 1 July, he would spend 1-10 July (inclusive) in correctional custody, 11-25 July (inclusive) doing extra duties, and 26 July-14 August (inclusive) under restriction.

If you vary the example slightly by using 5, 10, and 15 day unit breakdowns of the prime factor, the result is five days of correctional custody (1-5 July, inclusive), 15 days of extra duty (6-20 July, inclusive), and 30 days of restriction (21 July-19 August, inclusive). You can see that a wide variety of combinations is possible.

Similar rules are applicable to consecutive punishment of arrest in quarters and restriction. See *MCM*, paragraph 131(d) for details. Figure 6-4 gives tabulations of various combinations of two consecutively-served punishments. Note that *MCM*, paragraph 131(d) requires use of the Table of Equivalent Nonjudicial Punishments at the time the punishment is imposed, if it is to be used at all. For example, the last 10 days of a 20-day punishment of correctional custody may be mitigated, after 10 days have been served, to 10 days of restriction. They may *NOT*, however, be mitigated to restriction for a period of more than 10 days using the applicable figures from the table, because only 10 days of the original punishment remain unserved.

### Concurrent Punishments

Concurrent punishments are those which are served at the same time. The rule is that punishments involving restraint (except for confinement on bread and water) may be combined

| Kind of punishment | Upon commissioned and warrant officers (To be used only by an officer with GCM jurisdiction, or by a flag officer in command or his delegate) | Upon other personnel |
|---|---|---|
| Arrest in quarters | 1 day | |
| Restriction | 2 days | 2 days |
| Extra duties | | 1½ days* |
| Correctional custody | | 1 day |
| Forfeiture of pay | 1 day's pay | 1 day's pay |
| Detention of pay | 1½ days' pay | 1½ days' pay* |

*The factors designated by asterisks in the table above are 2 instead of 1½ when the punishment is imposed by a commanding officer below the grade of major or lieutenant commander. The punishment of forfeiture and detention of pay may not be substituted for the other punishments listed in the table, nor may those other punishments be substituted for forfeiture or detention of pay.

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Figure 6-3.—Table of Equivalent Punishments.

to run concurrently in an amount equal to the maximum imposable for the most severe form of restraint imposed. If, for example, a LCDR/MAJ or over wished to impose restriction and extra duty, he could not impose the combination for a period longer than 45 days, the maximum amount of extra duty (the more serious of the two forms of restraint) imposable.

## EFFECTIVE DATES OF PUNISHMENTS

As a general rule, punishments awarded at mast take effect immediately upon imposition, unless they are suspended, stayed, or otherwise deferred. If, however, the offender is currently serving a previous nonjudicial punishment of the same type, the new nonjudicial punishment does not commence until the previous punishment is completed (i.e., before a second forfeiture or detention of pay may take effect, all previous forfeitures or detentions must be completed, and before a second punishment involving restraint may take effect, all prior punishments involving restraint must be completed). Confinement on bread and water or correctional custody may be deferred by afloat commanders for a period of up to 15 days, if such deferment is dictated by "the exigencies of the service." This means, for example, that if confinement on bread and water is awarded while the ship is at sea and the ship has no confinement facility, the sentence may be deferred until an ashore confinement facility is available, but not more than 15 days.

### Staying of Certain Punishments

When persons NOT attached to or embarked in a vessel are awarded punishments involving restraint or extra duties, the effective date of the punishment depends upon two factors: (1) whether the accused intends to submit an appeal, and (2) whether the accused desires to begin serving his punishment notwithstanding his intent to appeal. Punishments falling into the category of "restraint" are arrest in quarters, correctional custody, confinement on bread and water or diminished rations, and restriction.

If the accused indicates that he intends to appeal at the mast hearing, that portion of the punishment awarded which involves restraint or extra duties should be stayed pending completion of the appeal. If the accused does not indicate an intent to appeal at the mast hearing but later decides to appeal (in a timely manner), any further serving of the punishment involving

For combining Correctional Custody with either Extra Duties or Restriction to Limits to be served consecutively.

| CC | + | R | or | ED |
|---|---|---|---|---|
| 1 | + | 58 | or | 43 |
| 2 | + | 56 | or | 42 |
| 3 | + | 54 | or | 40 |
| 4 | + | 52 | or | 39 |
| 5 | + | 50 | or | 37 |
| 6 | + | 48 | or | 36 |
| 7 | + | 46 | or | 34 |
| 8 | + | 44 | or | 33 |
| 9 | + | 42 | or | 31 |
| 10 | + | 40 | or | 30 |
| 11 | + | 38 | or | 28 |
| 12 | + | 36 | or | 27 |
| 13 | + | 34 | or | 25 |
| 14 | + | 32 | or | 24 |
| 15 | + | 30 | or | 22 |
| 16 | + | 28 | or | 21 |
| 17 | + | 26 | or | 19 |
| 18 | + | 24 | or | 18 |
| 19 | + | 22 | or | 16 |
| 20 | + | 20 | or | 15 |
| 21 | + | 18 | or | 13 |
| 22 | + | 16 | or | 12 |
| 23 | + | 14 | or | 10 |
| 24 | + | 12 | or | 9 |
| 25 | + | 10 | or | 7 |
| 26 | + | 8 | or | 6 |
| 27 | + | 6 | or | 4 |
| 28 | + | 4 | or | 3 |
| 29 | + | 2 | or | 1 |

CC_Number of days of Correctional Custody

R_Number of days of Restriction to Limits

ED_Number of days of Extra Duty

For combining Extra Duties and Restriction to Limits to be served conseutively.

| ED | + | R |
|---|---|---|
| 1 | + | 58 |
| 2 | + | 57 |
| 3 | + | 56 |
| 4 | + | 54 |
| 5 | + | 53 |
| 6 | + | 52 |
| 7 | + | 50 |
| 8 | + | 49 |
| 9 | + | 48 |
| 10 | + | 46 |
| 11 | + | 45 |
| 12 | + | 44 |
| 13 | + | 42 |
| 14 | + | 41 |
| 15 | + | 40 |
| 16 | + | 38 |
| 17 | + | 37 |
| 18 | + | 36 |
| 19 | + | 34 |
| 20 | + | 33 |
| 21 | + | 32 |
| 22 | + | 30 |
| 23 | + | 29 |
| 24 | + | 28 |
| 25 | + | 26 |
| 26 | + | 25 |
| 27 | + | 24 |
| 28 | + | 22 |
| 29 | + | 21 |
| 30 | + | 20 |
| 31 | + | 18 |
| 32 | + | 17 |
| 33 | + | 16 |
| 34 | + | 14 |
| 35 | + | 13 |
| 36 | + | 12 |
| 37 | + | 10 |
| 38 | + | 9 |
| 39 | + | 8 |
| 40 | + | 6 |
| 41 | + | 5 |
| 42 | + | 4 |
| 43 | + | 2 |
| 44 | + | 1 |

(Note 1)

For combining Forfeiture of pay and Detention of pay

| FF | + | DP |
|---|---|---|
| 1 | + | 43 |
| 2 | + | 42 |
| 3 | + | 40 |
| 4 | + | 39 |
| 5 | + | 37 |
| 6 | + | 36 |
| 7 | + | 34 |
| 8 | + | 33 |
| 9 | + | 31 |
| 10 | + | 30 |
| 11 | + | 28 |
| 12 | + | 27 |
| 13 | + | 25 |
| 14 | + | 24 |
| 15 | + | 22 |
| 16 | + | 21 |
| 17 | + | 19 |
| 18 | + | 18 |
| 19 | + | 16 |
| 20 | + | 15 |
| 21 | + | 13 |
| 22 | + | 12 |
| 23 | + | 10 |
| 24 | + | 9 |
| 25 | + | 7 |
| 26 | + | 6 |
| 27 | + | 4 |
| 28 | + | 3 |
| 29 | + | 1 |

(Notes No 2 & 3)

FF_Number of days of Forfeiture of pay.

DP_Number of days of Detention of pay.

Note 1: Extra Duties and Restriction to Limits may be combined to be served concurrently to the maximum of Extra Duties.

Note 2: Foreiture of pay and Detention of Pay must be expressed in dollars not in days.

Note 3: In no case shall Forfeiture or Detention of Pay or a combination thereof be imposed in excess of 15 days in any single month.

For combining Detention of pay and Forfeiture of pay.

| DP | + | FF |
|---|---|---|
| 1 | + | 29 |
| 2 | + | 28 |
| 3 | + | 28 |
| 4 | + | 27 |
| 5 | + | 26 |
| 6 | + | 26 |
| 7 | + | 25 |
| 8 | + | 24 |
| 9 | + | 24 |
| 10 | + | 23 |
| 11 | + | 22 |
| 12 | + | 22 |
| 13 | + | 21 |
| 14 | + | 20 |
| 15 | + | 20 |
| 16 | + | 19 |
| 17 | + | 18 |
| 18 | + | 18 |
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| 26 | + | 12 |
| 27 | + | 12 |
| 28 | + | 11 |
| 29 | + | 10 |
| 30 | + | 10 |
| 31 | + | 9 |
| 32 | + | 8 |
| 33 | + | 8 |
| 34 | + | 7 |
| 35 | + | 6 |
| 36 | + | 6 |
| 37 | + | 5 |
| 38 | + | 4 |
| 39 | + | 4 |
| 40 | + | 3 |
| 41 | + | 2 |
| 42 | + | 2 |
| 43 | + | 1 |

(Notes No 2 & 3)

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Figure 6-4.—Combinations of two Consecutively-served Punishments.

restraint or extra duties should be stayed pending completion of the appeal.

While the general rule is to stay these punishments until the appeal is acted upon, the accused may request that the punishment not be stayed and begin serving it immediately. No format for such a request has been prescribed; however, you should at least obtain from the accused a signed request that his punishment NOT be stayed during the pendancy of his appeal.

## APPEALS

A member who is awarded NJP and who believes his punishment unjust or disproportionate to the offense has the right to appeal the award to higher authority. Normally, any appeal from NJP is made to the area coordinator having GCM authority, but see *JAGMAN*, Sec. 0101f(2). Article 15 requires the appeal to be made "promptly," which has been interpreted by *MCM*, paragraph 135 to mean within fifteen days of imposition–except under the most unusual circumstances. Appeals not brought within this period need not be considered by the superior authority.

The appeal must be in writing and should include the appellant's reasons for considering the punishment unjust or disproportionate. Under circumstances spelled out in *MCM*, paragraph 135, the reviewing authority is required to refer the case to a judge advocate for advice. In deciding the appeal, the authority to whom the appeal is addressed is not limited to the written record but may make any inquiries he deems desirable. The superior authority may leave unchanged, suspend, remit, mitigate, or set aside all or part of the punishment imposed; in no case may he increase the punishment. He is required to advise the appellant in writing and through channels of the action taken.

Generally, the officer imposing the punishment advises the accused of his right to appeal at the time the punishment is imposed. In any event, it is the affirmative duty of the CO who imposed punishment to ensure that the accused's right to appeal is explained to and understood by him after punishment is imposed. A record of this explanatory action is made on the NAVPERS 1626/7. See Section I of figure 6-1.

## EXECUTION OF NJP

Before certain punishments may be given effect, there must be paperwork. SECNAVINST 1640.9 requires a Confinement Order, NAVPERS 1523, before a member may be confined. Figure 6-5 illustrates the correct preparation of a NAVPERS 1523 when correctional custody is imposed. Note that *BUPERSMAN* 1850100 has been changed to permit CPO's (E-7 through E-9) to sign confinement orders, if they are authorized in writing by their commanding officers. Disbursing officers will take no action to affect a member's pay without a substantiating document–in the case of NJP affecting pay, a NAVPERS 1070/607. Figures 6-6 through 6-8 show correctly prepared NAVPERS 1070/607's for a reduction in rate, a detention of pay, and a forfeiture of pay, respectively. If you have questions regarding completion of this form, see *Navy Pay and Personnel Procedures Manual (PAYPERSMAN)*, NAVSO P-3050.

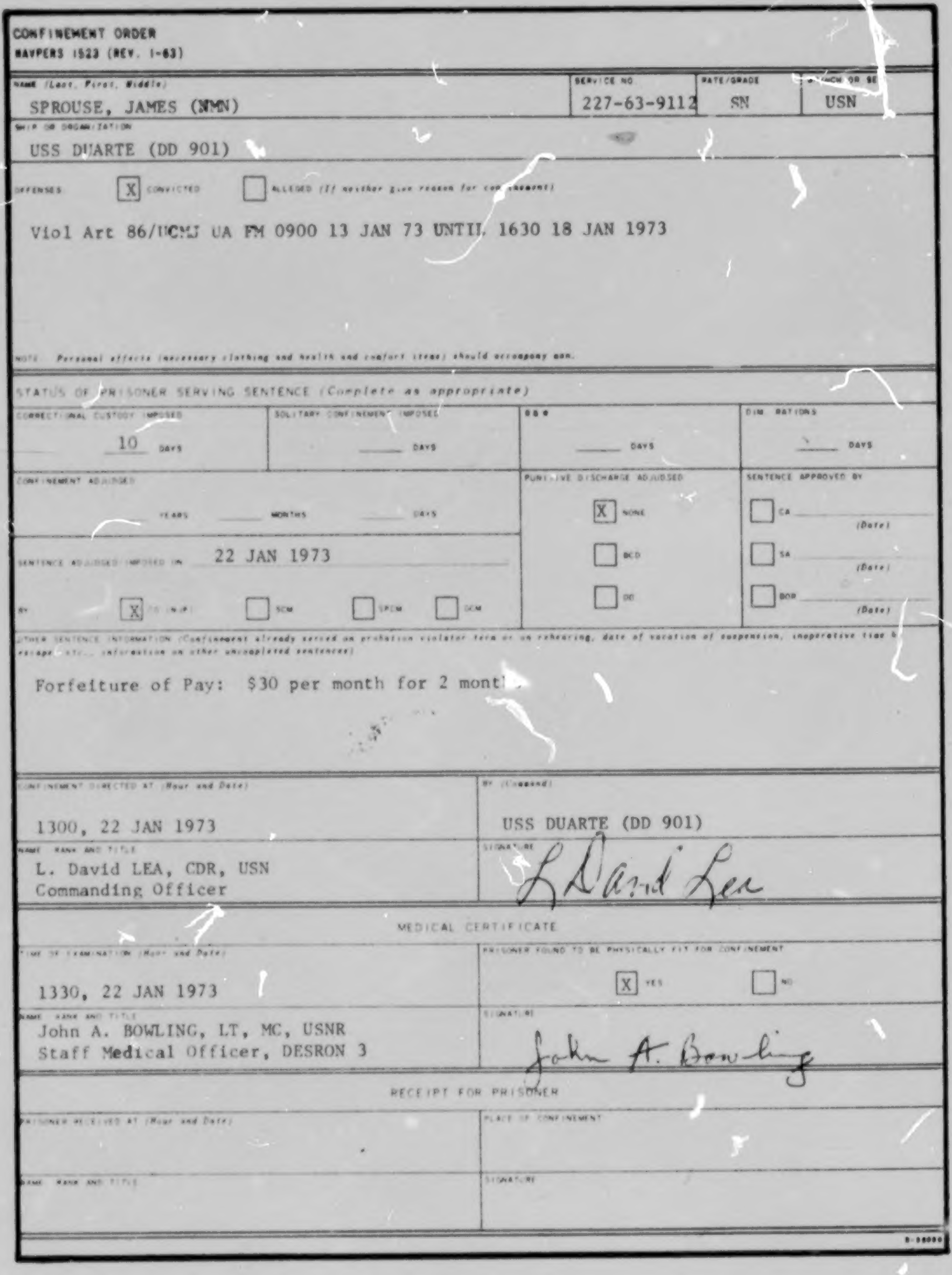
Proper format for letters of censure is given by *JAGMAN*, Appendix A-1-(c). For the other punishments, no regulation requires more than a notation on the NAVPERS 1626/7. Nevertheless, good administrative practice requires written orders, substantially in the format shown in figure 6-9 for extra duty, and 6-10 for restriction and arrest in quarters, to spell out the details of the restraint.

### NJP Of Officers

The officer who imposes NJP on an officer is required to notify BUPERS (Pers-82) of any NJP imposed. The letter report is to be submitted as soon as the results are final, i.e., when the officer declines to appeal, when he does not appeal in the fifteen days, or after the appeal has been decided. See *BUPERSMAN* 3410100for necessary entries.

## POST-MAST ACTIVITY

The Legalman may have duties in four distinct areas at the completion of a mast. He must assure that all necessary entries are made in the service record of the member being punished. He must provide reports for entries in the POD and the ship or station log book. Finally, he maintains the Unit Punishment Book.



**CONFINEMENT ORDER**
**NAVPERS 1523 (REV. 1-63)**

NAME (Last, First, Middle): SPROUSE, JAMES (NMN)
SERVICE NO.: 227-63-9112
RATE/GRADE: SN
BRANCH OR SERVICE: USN
SHIP OR ORGANIZATION: USS DUARTE (DD 901)

OFFENSES: ☒ CONVICTED ☐ ALLEGED (If neither give reason for confinement)

Viol Art 86/UCMJ UA FM 0900 13 JAN 73 UNTIL 1630 18 JAN 1973

NOTE: Personal effects (necessary clothing and health and comfort items) should accompany man.

STATUS OF PRISONER SERVING SENTENCE (Complete as appropriate)

CORRECTIONAL CUSTODY IMPOSED: 10 DAYS
SOLITARY CONFINEMENT IMPOSED: ____ DAYS
B & W: ____ DAYS
DIM. RATIONS: ____ DAYS

CONFINEMENT ADJUDGED: ____ YEARS ____ MONTHS ____ DAYS
SENTENCE ADJUDGED/IMPOSED ON: 22 JAN 1973
BY: ☒ CO (NJP) ☐ SCM ☐ SPCM ☐ GCM

PUNITIVE DISCHARGE ADJUDGED: ☒ NONE ☐ BCD ☐ DD

SENTENCE APPROVED BY:
☐ CA ____ (Date)
☐ SA ____ (Date)
☐ BOR ____ (Date)

OTHER SENTENCE INFORMATION (Confinement already served on probation violator term or on rehearing, date of vacation of suspension, inoperative time by escape, etc., information on other uncompleted sentences)

Forfeiture of Pay: $30 per month for 2 months.

CONFINEMENT DIRECTED AT (Hour and Date): 1300, 22 JAN 1973
BY (Command): USS DUARTE (DD 901)
NAME, RANK AND TITLE: L. David LEA, CDR, USN
Commanding Officer
SIGNATURE: L David Lea

MEDICAL CERTIFICATE

TIME OF EXAMINATION (Hour and Date): 1330, 22 JAN 1973
PRISONER FOUND TO BE PHYSICALLY FIT FOR CONFINEMENT: ☒ YES ☐ NO
NAME, RANK AND TITLE: John A. BOWLING, LT, MC, USNR
Staff Medical Officer, DESRON 3
SIGNATURE: John A. Bowling

RECEIPT FOR PRISONER

PRISONER RECEIVED AT (Hour and Date):
PLACE OF CONFINEMENT:
NAME, RANK AND TITLE:
SIGNATURE:

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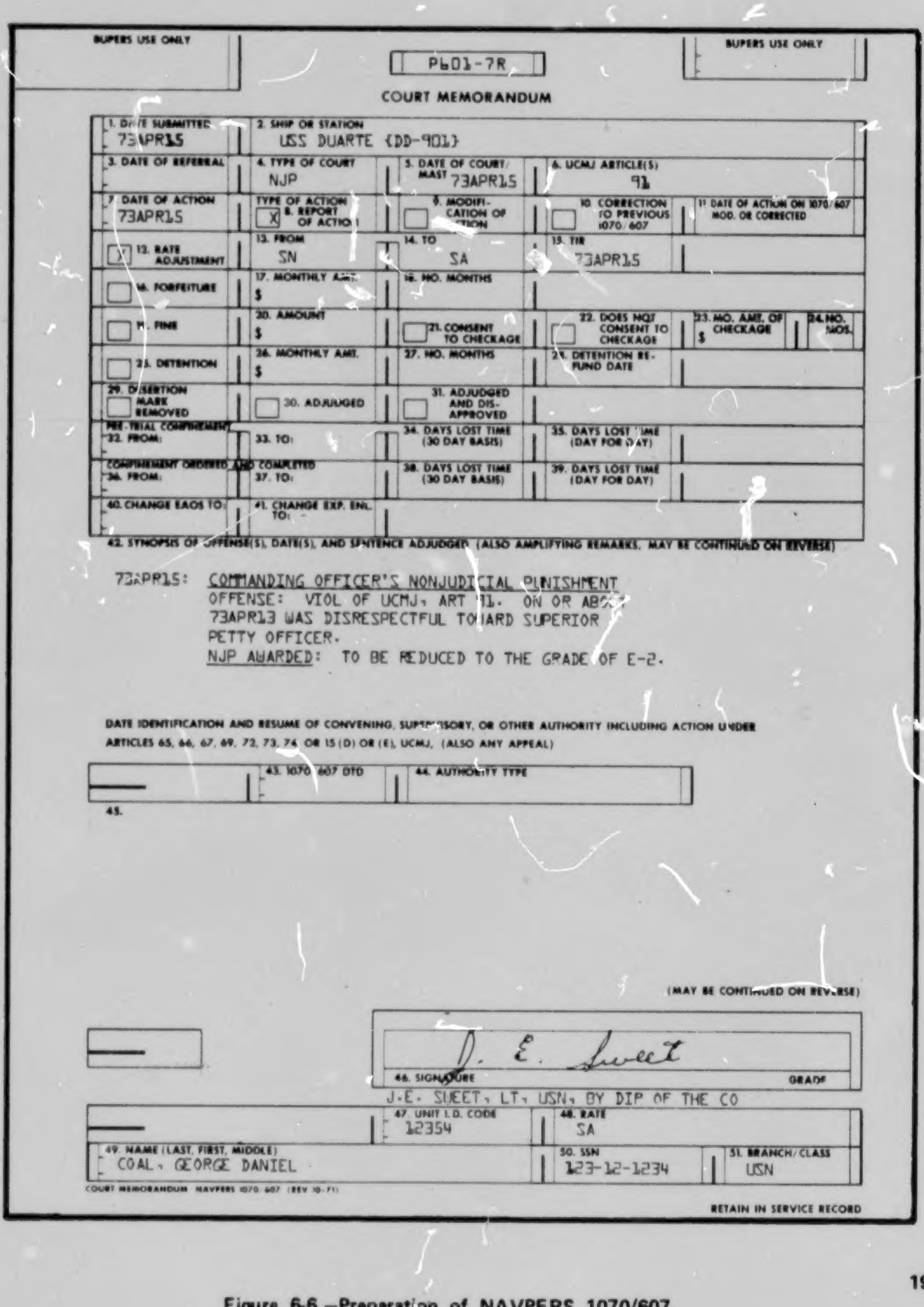
Figure 6-5.–Confinement Order.



BUPERS USE ONLY

P601-7R

BUPERS USE ONLY

COURT MEMORANDUM

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1. DATE SUBMITTED<br>73APR15 | 2. SHIP OR STATION<br>USS DUARTE (DD-901) | | | | | | |
| 3. DATE OF REFERRAL | 4. TYPE OF COURT<br>NJP | 5. DATE OF COURT/MAST 73APR15 | 6. UCMJ ARTICLE(S)<br>91 | | | | |
| 7. DATE OF ACTION<br>73APR15 | TYPE OF ACTION<br>☒ 8. REPORT OF ACTION | ☐ 9. MODIFICATION OF ACTION | ☐ 10. CORRECTION TO PREVIOUS 1070/607 | 11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED | | | |
| ☒ 12. RATE ADJUSTMENT | 13. FROM<br>SN | 14. TO<br>SA | 15. TIR<br>73APR15 | | | | |
| ☐ 16. FORFEITURE | 17. MONTHLY AMT.<br>$ | 18. NO. MONTHS | | | | | |
| ☐ 19. FINE | 20. AMOUNT<br>$ | ☐ 21. CONSENT TO CHECKAGE | ☐ 22. DOES NOT CONSENT TO CHECKAGE | 23. MO. AMT. OF CHECKAGE<br>$ | 24. NO. MOS. | | |
| ☐ 25. DETENTION | 26. MONTHLY AMT.<br>$ | 27. NO. MONTHS | 28. DETENTION REFUND DATE | | | | |
| ☐ 29. DESERTION MARK REMOVED | ☐ 30. ADJUDGED | ☐ 31. ADJUDGED AND DISAPPROVED | | | | | |
| PRE-TRIAL CONFINEMENT<br>32. FROM: | 33. TO: | 34. DAYS LOST TIME (30 DAY BASIS) | 35. DAYS LOST TIME (DAY FOR DAY) | | | | |
| CONFINEMENT ORDERED AND COMPLETED<br>36. FROM: | 37. TO: | 38. DAYS LOST TIME (30 DAY BASIS) | 39. DAYS LOST TIME (DAY FOR DAY) | | | | |
| 40. CHANGE EAOS TO: | 41. CHANGE EXP. ENL. TO: | | | | | | |

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

73APR15: COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT
OFFENSE: VIOL OF UCMJ, ART 91. ON OR ABOUT
73APR13 WAS DISRESPECTFUL TOWARD SUPERIOR
PETTY OFFICER.
NJP AWARDED: TO BE REDUCED TO THE GRADE OF E-2.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15 (D) OR (E), UCMJ, (ALSO ANY APPEAL)

| | | |
|---|---|---|
| | 43. 1070/607 DTD | 44. AUTHORITY TYPE |

45.

(MAY BE CONTINUED ON REVERSE)

J. E. Sweet

46. SIGNATURE GRADE

J.E. SWEET, LT, USN, BY DIR OF THE CO

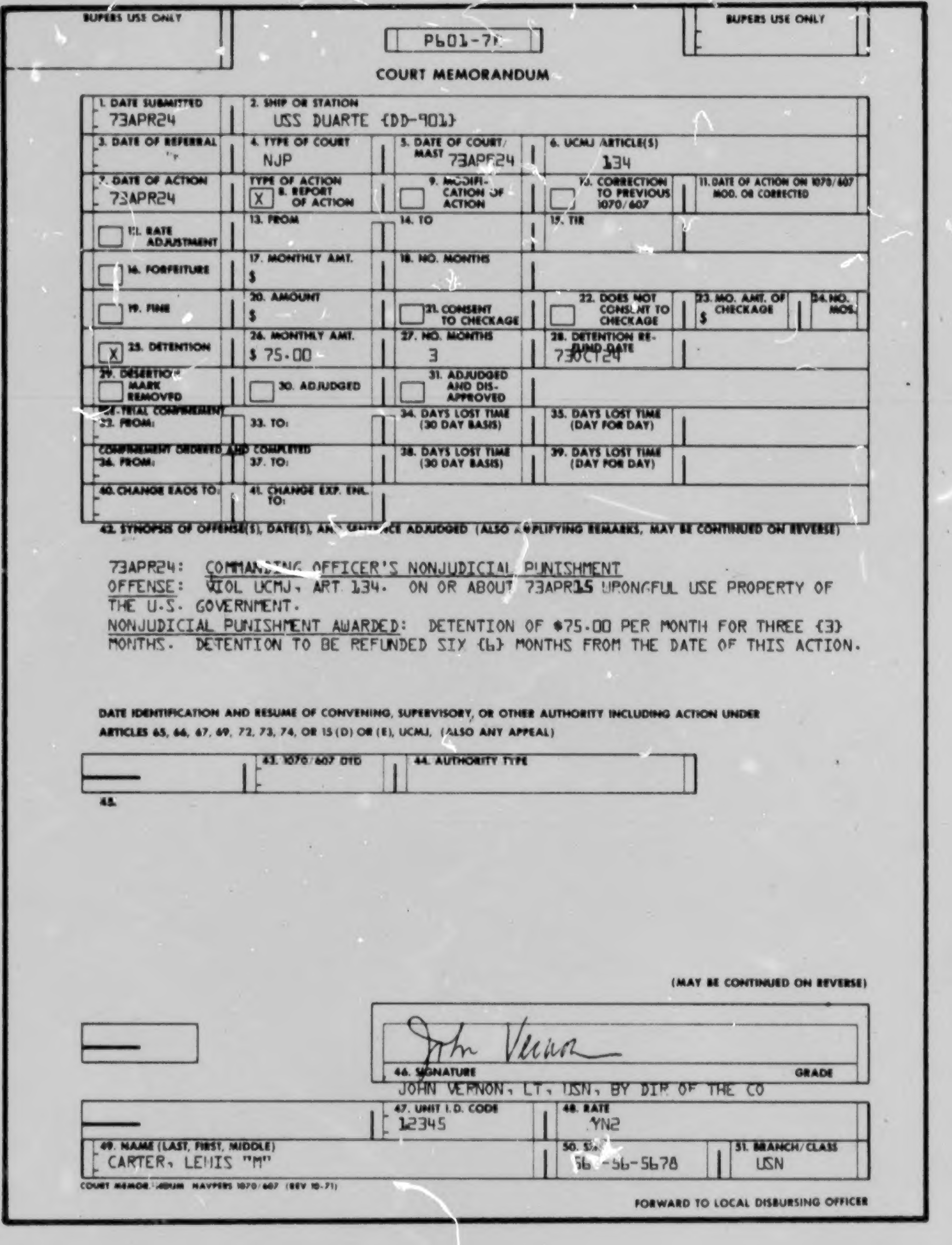
| | | |
|---|---|---|
| 47. UNIT I.D. CODE<br>12354 | 48. RATE<br>SA | |
| 49. NAME (LAST, FIRST, MIDDLE)<br>COAL, GEORGE DANIEL | 50. SSN<br>123-12-1234 | 51. BRANCH/CLASS<br>USN |

COURT MEMORANDUM NAVPERS 1070/607 (REV 10-71)

RETAIN IN SERVICE RECORD

192.30

Figure 6-6.—Preparation of NAVPERS 1070/607.



BUPERS USE ONLY

P601-7[illegible]

BUPERS USE ONLY

COURT MEMORANDUM

1. DATE SUBMITTED: 73APR24
2. SHIP OR STATION: USS DUARTE {DD-901}
3. DATE OF REFERRAL:
4. TYPE OF COURT: NJP
5. DATE OF COURT/MAST: 73APR24
6. UCMJ ARTICLE(S): 134
7. DATE OF ACTION: 73APR24
TYPE OF ACTION
☒ 8. REPORT OF ACTION
☐ 9. MODIFICATION OF ACTION
☐ 10. CORRECTION TO PREVIOUS 1070/607
11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED
☐ 12. RATE ADJUSTMENT
13. FROM
14. TO
15. TIR
☐ 16. FORFEITURE
17. MONTHLY AMT. $
18. NO. MONTHS
☐ 19. FINE
20. AMOUNT $
☐ 21. CONSENT TO CHECKAGE
☐ 22. DOES NOT CONSENT TO CHECKAGE
23. MO. AMT. OF CHECKAGE $
24. NO. MOS.
☒ 25. DETENTION
26. MONTHLY AMT. $ 75.00
27. NO. MONTHS: 3
28. DETENTION REFUND DATE: 73OCT24
☐ 29. DESERTION MARK REMOVED
☐ 30. ADJUDGED
☐ 31. ADJUDGED AND DISAPPROVED
PRE-TRIAL CONFINEMENT
32. FROM:
33. TO:
34. DAYS LOST TIME (30 DAY BASIS)
35. DAYS LOST TIME (DAY FOR DAY)
CONFINEMENT ORDERED AND COMPLETED
36. FROM:
37. TO:
38. DAYS LOST TIME (30 DAY BASIS)
39. DAYS LOST TIME (DAY FOR DAY)
40. CHANGE EAOS TO:
41. CHANGE EXP. ENL. TO:

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

73APR24: COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT
OFFENSE: VIOL UCMJ, ART 134. ON OR ABOUT 73APR15 WRONGFUL USE PROPERTY OF THE U.S. GOVERNMENT.
NONJUDICIAL PUNISHMENT AWARDED: DETENTION OF $75.00 PER MONTH FOR THREE {3} MONTHS. DETENTION TO BE REFUNDED SIX {6} MONTHS FROM THE DATE OF THIS ACTION.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15 (D) OR (E), UCMJ, (ALSO ANY APPEAL)

43. 1070/607 DTD
44. AUTHORITY TYPE
45.

(MAY BE CONTINUED ON REVERSE)

John Vernon
46. SIGNATURE GRADE
JOHN VERNON, LT, USN, BY DIR OF THE CO

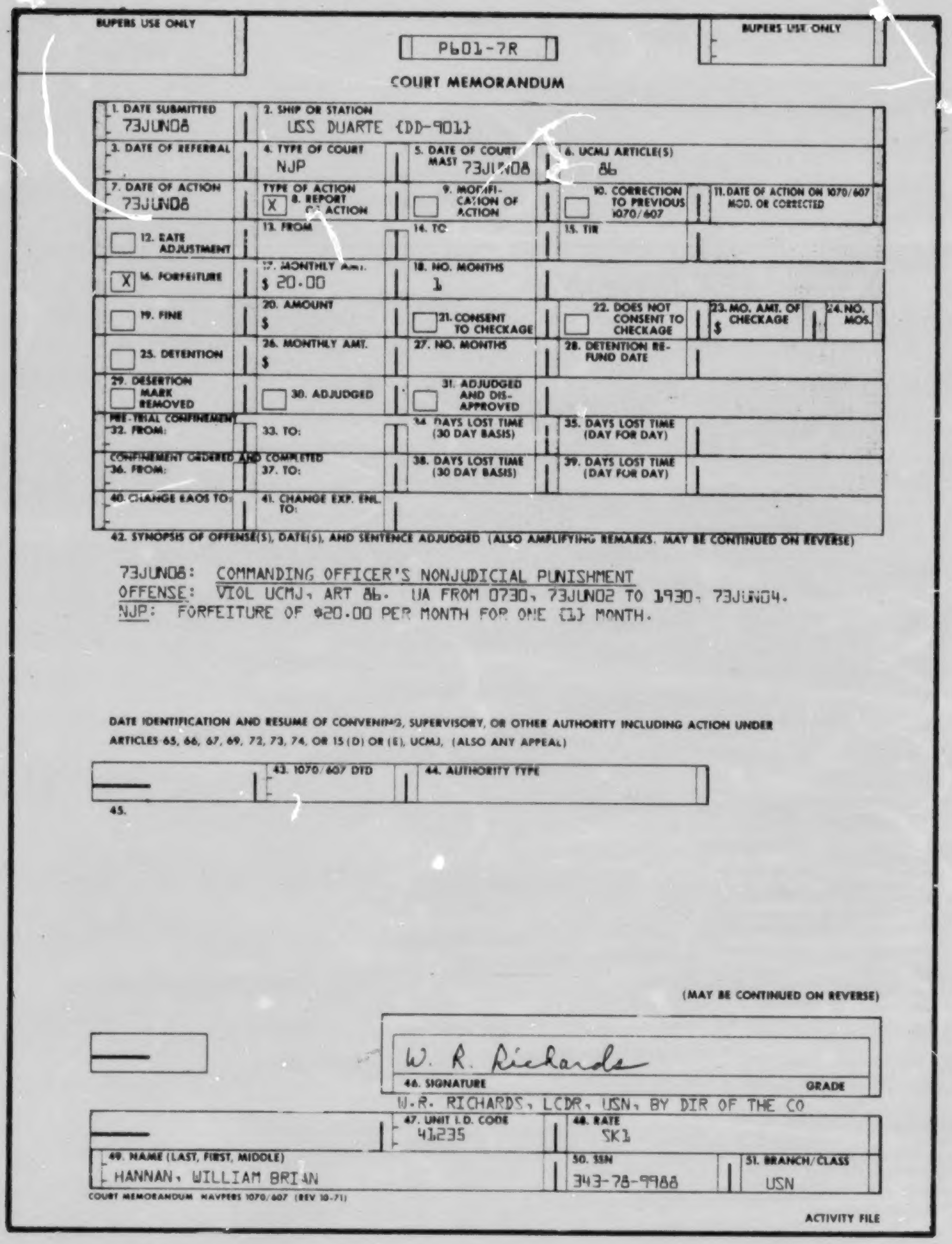
47. UNIT I.D. CODE: 12345
48. RATE: YN2
49. NAME (LAST, FIRST, MIDDLE): CARTER, LEWIS "M"
50. SSN: 56[illegible]-56-5678
51. BRANCH/CLASS: USN

COURT MEMORANDUM NAVPERS 1070/607 (REV 10-71)

FORWARD TO LOCAL DISBURSING OFFICER

192.31

Figure 6-7.—Preparation of NAVPERS 1070/607.



BUPERS USE ONLY

P601-7R

BUPERS USE ONLY

COURT MEMORANDUM

| | | | | | |
|---|---|---|---|---|---|
| 1. DATE SUBMITTED<br>73JUN08 | 2. SHIP OR STATION<br>USS DUARTE {DD-901} | | | | |
| 3. DATE OF REFERRAL | 4. TYPE OF COURT<br>NJP | 5. DATE OF COURT MAST 73JUN08 | 6. UCMJ ARTICLE(S)<br>86 | | |
| 7. DATE OF ACTION<br>73JUN08 | TYPE OF ACTION<br>☒ 8. REPORT OF ACTION | ☐ 9. MODIFICATION OF ACTION | ☐ 10. CORRECTION TO PREVIOUS 1070/607 | 11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED | |
| ☐ 12. RATE ADJUSTMENT | 13. FROM | 14. TO | 15. TIR | | |
| ☒ 16. FORFEITURE | 17. MONTHLY AMT.<br>$ 20.00 | 18. NO. MONTHS<br>1 | | | |
| ☐ 19. FINE | 20. AMOUNT<br>$ | ☐ 21. CONSENT TO CHECKAGE | ☐ 22. DOES NOT CONSENT TO CHECKAGE | 23. MO. AMT. OF CHECKAGE<br>$ | 24. NO. MOS. |
| ☐ 25. DETENTION | 26. MONTHLY AMT.<br>$ | 27. NO. MONTHS | 28. DETENTION REFUND DATE | | |
| ☐ 29. DESERTION MARK REMOVED | ☐ 30. ADJUDGED | ☐ 31. ADJUDGED AND DISAPPROVED | | | |
| PRE-TRIAL CONFINEMENT<br>32. FROM: | 33. TO: | 34. DAYS LOST TIME (30 DAY BASIS) | 35. DAYS LOST TIME (DAY FOR DAY) | | |
| CONFINEMENT ORDERED AND COMPLETED<br>36. FROM: | 37. TO: | 38. DAYS LOST TIME (30 DAY BASIS) | 39. DAYS LOST TIME (DAY FOR DAY) | | |
| 40. CHANGE EAOS TO: | 41. CHANGE EXP. ENL. TO: | | | | |

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS. MAY BE CONTINUED ON REVERSE)

73JUN08: COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT
OFFENSE: VIOL UCMJ, ART 86. UA FROM 0730, 73JUN02 TO 1930, 73JUN04.
NJP: FORFEITURE OF $20.00 PER MONTH FOR ONE {1} MONTH.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15(D) OR (E), UCMJ, (ALSO ANY APPEAL)

| | | |
|---|---|---|
| | 43. 1070/607 DTD | 44. AUTHORITY TYPE |

45.

(MAY BE CONTINUED ON REVERSE)

W. R. Richards

46. SIGNATURE GRADE

W.R. RICHARDS, LCDR, USN, BY DIR OF THE CO

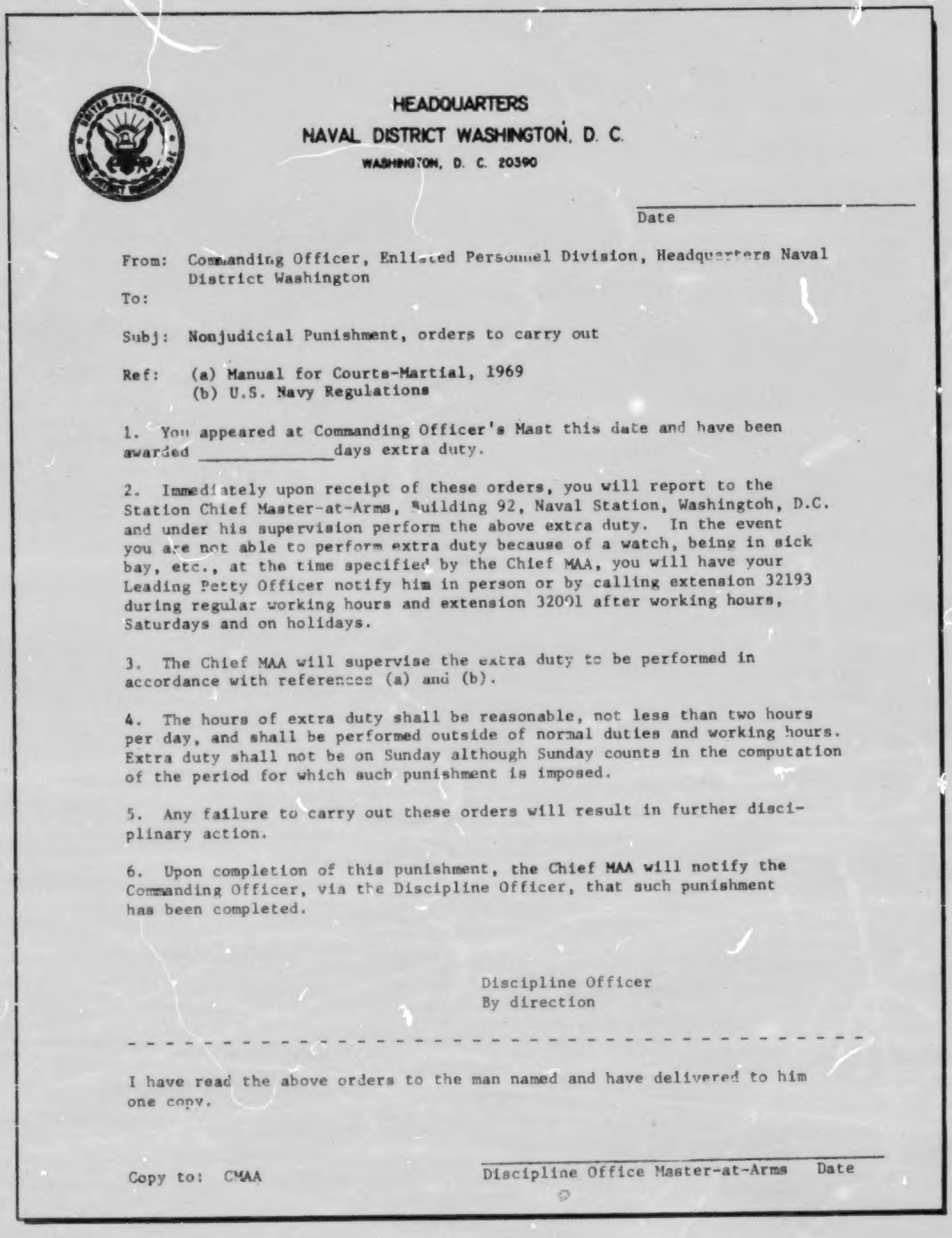
| | | |
|---|---|---|
| 47. UNIT I.D. CODE<br>41235 | 48. RATE<br>SK1 | |
| 49. NAME (LAST, FIRST, MIDDLE)<br>HANNAN, WILLIAM BRIAN | 50. SSN<br>343-78-9988 | 51. BRANCH/CLASS<br>USN |

COURT MEMORANDUM NAVPERS 1070/607 (REV 10-71)

ACTIVITY FILE

192.32

Figure 6-8.—Preparation of NAVPERS 1070/607.



**HEADQUARTERS**
**NAVAL DISTRICT WASHINGTON, D. C.**
WASHINGTON, D. C. 20390

Date

From: Commanding Officer, Enlisted Personnel Division, Headquarters Naval District Washington
To:

Subj: Nonjudicial Punishment, orders to carry out

Ref: (a) Manual for Courts-Martial, 1969
(b) U.S. Navy Regulations

1. You appeared at Commanding Officer's Mast this date and have been awarded ______________ days extra duty.

2. Immediately upon receipt of these orders, you will report to the Station Chief Master-at-Arms, Building 92, Naval Station, Washingtoh, D.C. and under his supervision perform the above extra duty. In the event you are not able to perform extra duty because of a watch, being in sick bay, etc., at the time specified by the Chief MAA, you will have your Leading Petty Officer notify him in person or by calling extension 32193 during regular working hours and extension 32001 after working hours, Saturdays and on holidays.

3. The Chief MAA will supervise the extra duty to be performed in accordance with references (a) and (b).

4. The hours of extra duty shall be reasonable, not less than two hours per day, and shall be performed outside of normal duties and working hours. Extra duty shall not be on Sunday although Sunday counts in the computation of the period for which such punishment is imposed.

5. Any failure to carry out these orders will result in further disciplinary action.

6. Upon completion of this punishment, the Chief MAA will notify the Commanding Officer, via the Discipline Officer, that such punishment has been completed.

Discipline Officer
By direction

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

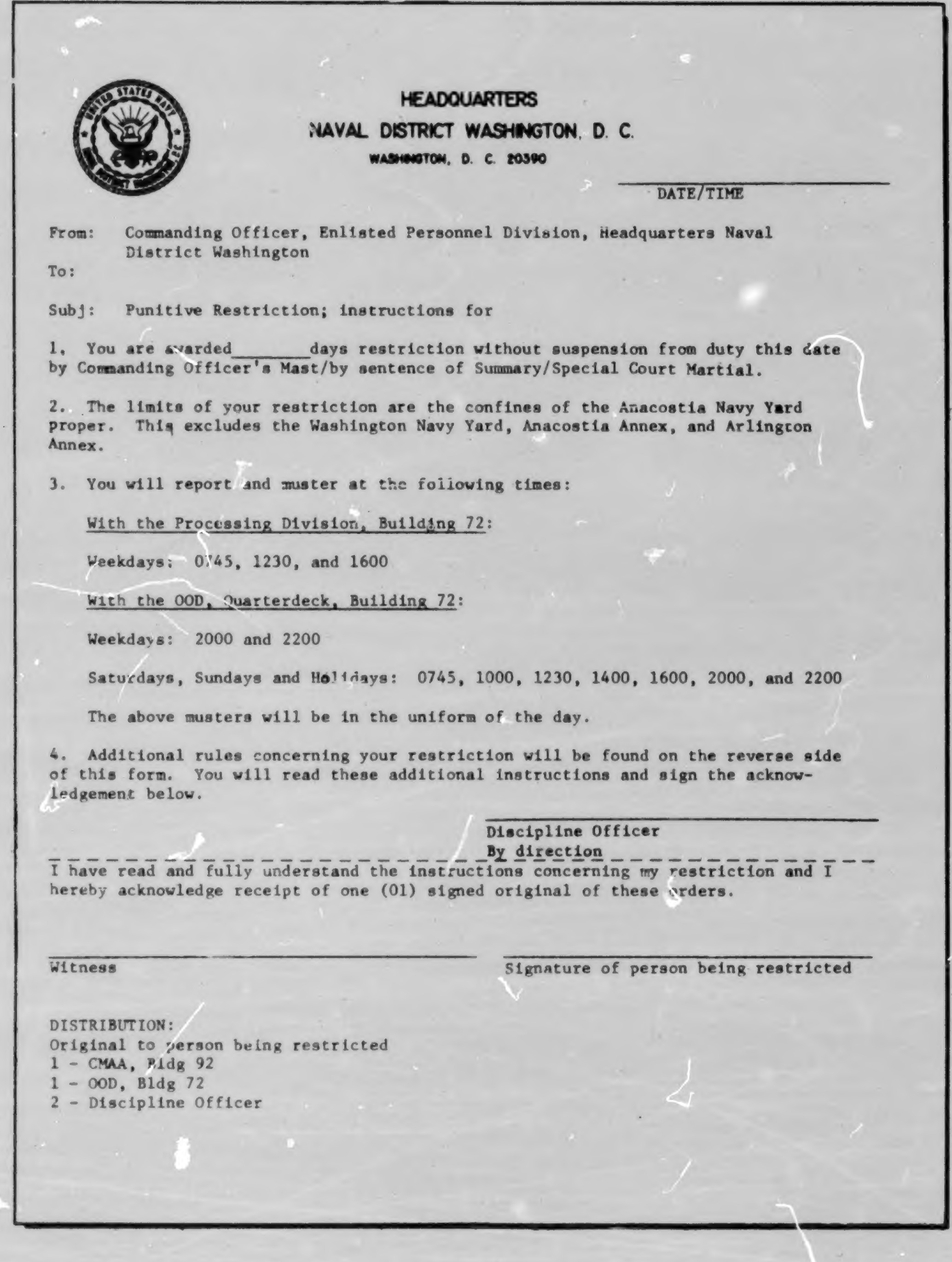
I have read the above orders to the man named and have delivered to him one copy.

Copy to: CMAA

Discipline Office Master-at-Arms Date

192.119

Figure 6-9.—Orders to Carry out NJP (Extra Duty).



HEADQUARTERS
NAVAL DISTRICT WASHINGTON, D. C.
WASHINGTON, D. C. 20390

____________________
DATE/TIME

From: Commanding Officer, Enlisted Personnel Division, Headquarters Naval District Washington
To:

Subj: Punitive Restriction; instructions for

1. You are awarded ________ days restriction without suspension from duty this date by Commanding Officer's Mast/by sentence of Summary/Special Court Martial.

2. The limits of your restriction are the confines of the Anacostia Navy Yard proper. This excludes the Washington Navy Yard, Anacostia Annex, and Arlington Annex.

3. You will report and muster at the following times:

With the Processing Division, Building 72:

Weekdays: 0745, 1230, and 1600

With the OOD, Quarterdeck, Building 72:

Weekdays: 2000 and 2200

Saturdays, Sundays and Holidays: 0745, 1000, 1230, 1400, 1600, 2000, and 2200

The above musters will be in the uniform of the day.

4. Additional rules concerning your restriction will be found on the reverse side of this form. You will read these additional instructions and sign the acknowledgement below.

____________________
Discipline Officer
By direction

I have read and fully understand the instructions concerning my restriction and I hereby acknowledge receipt of one (01) signed original of these orders.

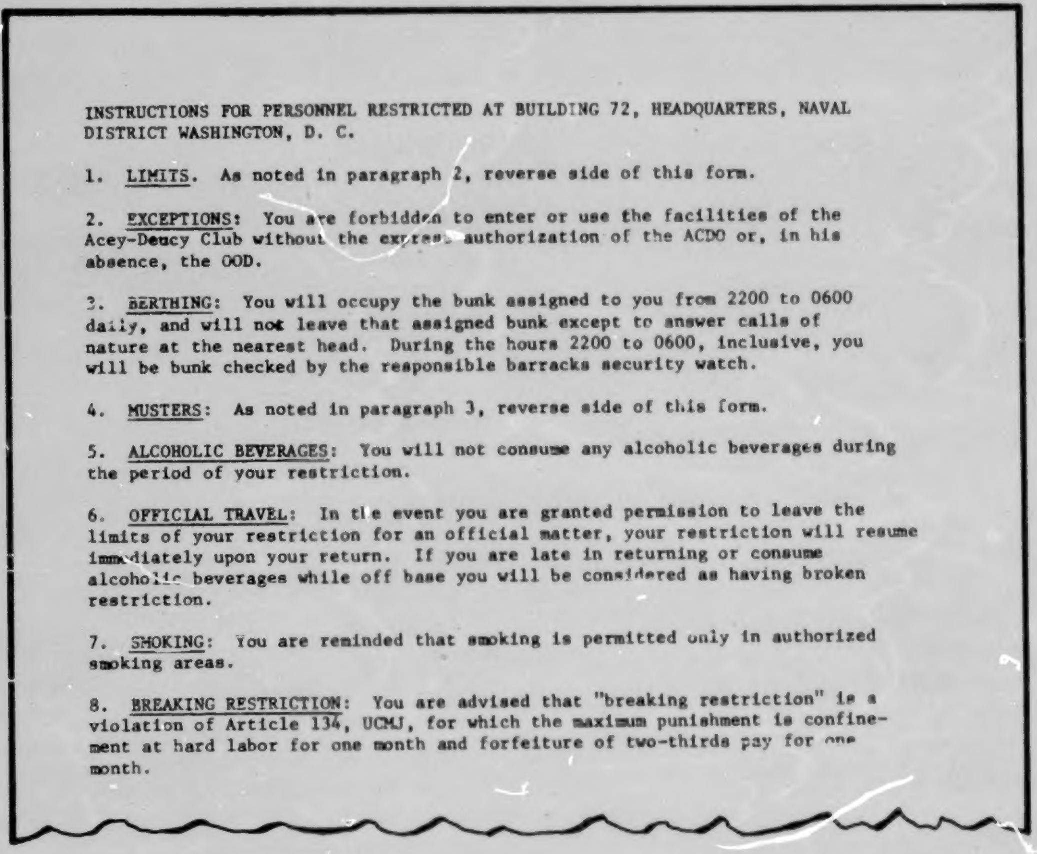
____________________
Witness

____________________
Signature of person being restricted

DISTRIBUTION:
Original to person being restricted
1 - CMAA, Bldg 92
1 - OOD, Bldg 72
2 - Discipline Officer

192.122.1

Figure 6-10.—Instructions for Punitive Restriction.



INSTRUCTIONS FOR PERSONNEL RESTRICTED AT BUILDING 72, HEADQUARTERS, NAVAL DISTRICT WASHINGTON, D. C.

1. LIMITS. As noted in paragraph 2, reverse side of this form.

2. EXCEPTIONS: You are forbidden to enter or use the facilities of the Acey-Deucy Club without the express authorization of the ACDO or, in his absence, the OOD.

3. BERTHING: You will occupy the bunk assigned to you from 2200 to 0600 daily, and will not leave that assigned bunk except to answer calls of nature at the nearest head. During the hours 2200 to 0600, inclusive, you will be bunk checked by the responsible barracks security watch.

4. MUSTERS: As noted in paragraph 3, reverse side of this form.

5. ALCOHOLIC BEVERAGES: You will not consume any alcoholic beverages during the period of your restriction.

6. OFFICIAL TRAVEL: In the event you are granted permission to leave the limits of your restriction for an official matter, your restriction will resume immediately upon your return. If you are late in returning or consume alcoholic beverages while off base you will be considered as having broken restriction.

7. SMOKING: You are reminded that smoking is permitted only in authorized smoking areas.

8. BREAKING RESTRICTION: You are advised that "breaking restriction" is a violation of Article 134, UCMJ, for which the maximum punishment is confinement at hard labor for one month and forfeiture of two-thirds pay for one month.

192.122.2

Figure 6-10.—Instructions for Punitive Restriction—(Continued).

## ENLISTED SERVICE RECORD ENTRIES

The manner in which service record entries must be made is dependent upon the nature of the offense and of the action taken by the commanding officer. Because almost all service record entries have now been incorporated into the Joint Uniform Military Pay System (JUMPS), they must be prepared on optical character recognition (OCR) typewriters and must be completed in *exact* conformance with the *PAYPERSMAN.*

### No Punishment

If the commanding officer determines that the alleged offender has not committed the offense and dismisses the charge or if he determines that the alleged offender is guilty but determines that punishment is inappropriate and excuses the offense, no entry is made in the member's service record. There is one small exception to this general rule. Whenever the service record contains a UA entry, *BUPERSMAN* 5030500 requires a subsequent entry to indicate what action was taken as a result of the UA. *BUPERSMAN* 5030310 requires a page 13 entry for UA of less than 24 hours, and the *PAYPERSMAN* requires preparation of a NAVPERS 1070/606 for UA of more than 24 hours. If, then, a member is UA for less than 24 hours and is awarded no punishment at mast, an explanatory entry is required on page 13; if his absence is for more than 24 hours, entries are required on the NAVPERS 1070/606 in accordance with the *PAYPERSMAN*: otherwise no service record entries are required when no punishment is imposed.

### Reference to Court-Martial

*BUPERSMAN* 5030500 indicates that no entries are to be made in the member's service record if the commanding officer refers the case to a court-martial. Again, there is an exception when UA is involved. The *PAYPERSMAN* requires additional entries on the NAVPERS 1070/606 when a UA case is referred to a court-martial.

### Punishment Imposed

Whenever NJP is imposed on enlisted members, a memorandum entry on page 9 is required by *BUPERSMAN* 5030360 and 3410150. If, then, the case is dismissed or excused, no service record entry is required.

PUNISHMENTS AFFECTING PAY.–The cardinal principle here is that for every punishment which affects the member's pay, a NAVPERS 1070/607 must be prepared. Punishments which affect pay are a reduction in rate, forfeiture of pay, and detention of pay. Examples of how to use the NAVPERS 1070/607 are given earlier in this chapter. See the *PAYPERSMAN* for detailed instruction on its use along with numerous explanatory examples. Before turning to specific UA situations, there is one for this general requirement: wherever the mast results in a reduction in rate, *BUPERSMAN* 5030280 requires a page 4 entry in addition to all other required entries.

UA, Less Than 24 hours.–Because there is no lost time when the UA period is less than 24 hours, it is not necessary to prepare a NAVPERS 1070/606. You need only prepare a NAVPERS 1070/607 substantially as shown in figure 6-8. Because you will have a page 13 entry, it will, of course, be necessary to make another page 13 entry showing termination of UA. Do not put the NJP entry on page 13 as it has been made on a NAVPERS 1070/607.

UA, More Than 24 hours.–In this case, you will have prepared a NAVPERS 1070/606 on the second day of UA. After the commanding officer determines that the absence was both (1) unauthorized absence and (2) NOT excused (both of which he must do before imposing any punishment which affects pay), you must complete blocks 38 through 42 as shown in figure 6-11. DO NOT COMPLETE section I. Instead, you will show the punishment awarded on a NAVPERS 1070/607 as shown in figure 6-8.

PUNISHMENTS NOT AFFECTING PAY.–Again we must differentiate between offenses which involve lost time and those which do not. If the punishment does NOT affect the member's pay (i.e., is a punishment OTHER THAN reduction, forfeiture, or detention of pay) and does not involve lost time, you need only make a page 13 entry. Sample page 13 entries are given in *BUPERSMAN*, page 50-X-35.

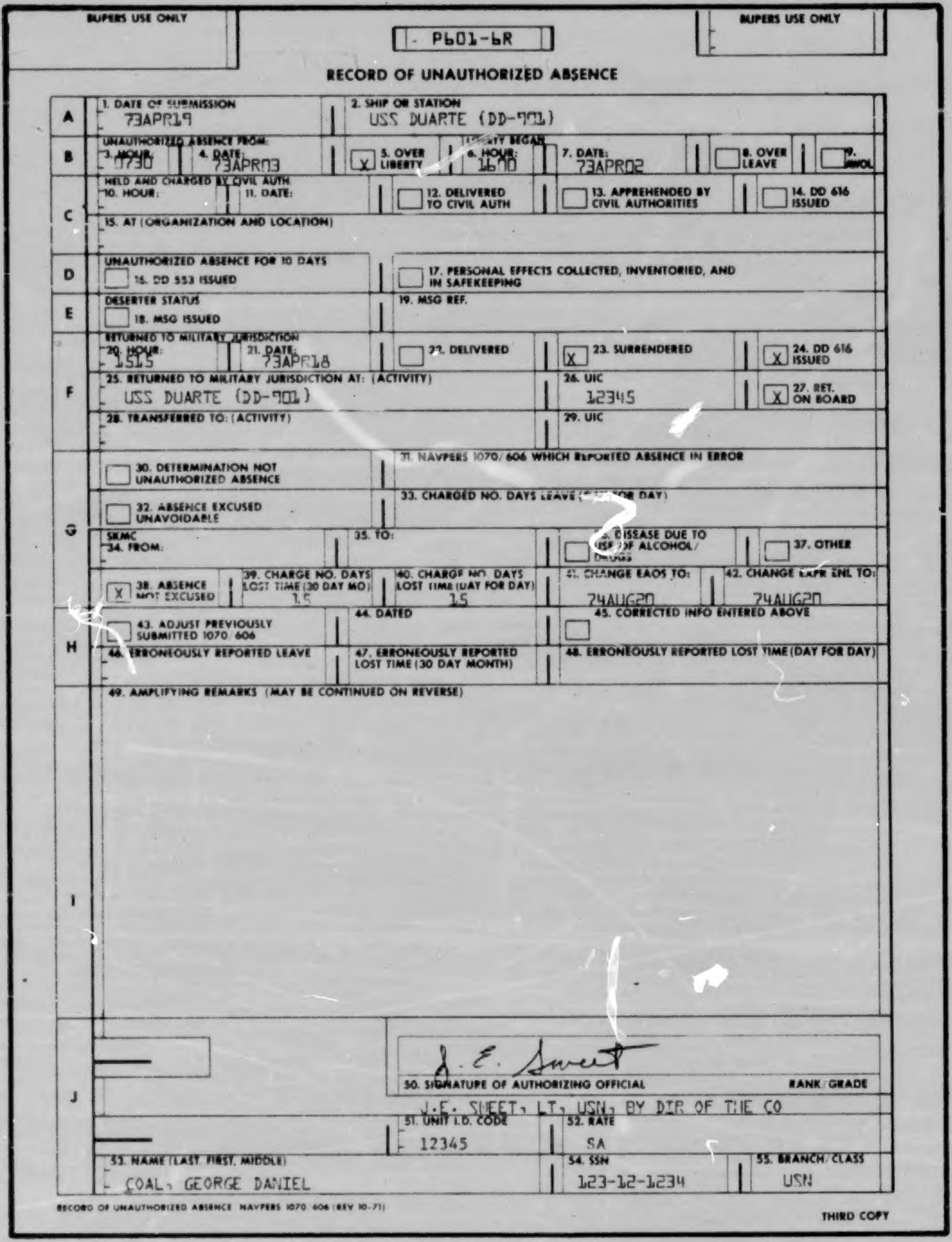
If lost time is involved, you will need to complete the NAVPERS 1070/606 which initially recorded the UA. You will take the same actions as taken when the punishment affected pay EXCEPT that the punishment will be entered in Section I as shown in figure 6-12. Because the punishment does not affect pay, it is not necessary (indeed, it is wrong) to prepare a NAVPERS 1070/607.

## OFFICERS

*BUPERSMAN* 3410100 requires a letter report of any imposition of NJP on officers to be made to the Chief of Naval Personnel via the chain of command. Recall that nothing adverse to the officer may be placed in his field service record, which means that no record of NJP will appear in the officer's field jacket.

## POD ENTRY

Although there is no requirement that the results of captain's mast be published in the POD, standard practice is that an entry be made in the POD which includes the name and grade of the offender, offender's social security



BUPERS USE ONLY

P601-6R

BUPERS USE ONLY

RECORD OF UNAUTHORIZED ABSENCE

A
1. DATE OF SUBMISSION: 73APR19
2. SHIP OR STATION: USS DUARTE (DD-701)

B
UNAUTHORIZED ABSENCE FROM: 3. HOUR: 0730 4. DATE: 73APR03
☒ 5. OVER LIBERTY
LIBERTY BEGAN: 6. HOUR: 1600 7. DATE: 73APR02
☐ 8. OVER LEAVE
☐ 9. UNOL

C
HELD AND CHARGED BY CIVIL AUTH. 10. HOUR: 11. DATE:
☐ 12. DELIVERED TO CIVIL AUTH
☐ 13. APPREHENDED BY CIVIL AUTHORITIES
☐ 14. DD 616 ISSUED
15. AT (ORGANIZATION AND LOCATION)

D
UNAUTHORIZED ABSENCE FOR 10 DAYS
☐ 16. DD 553 ISSUED
☐ 17. PERSONAL EFFECTS COLLECTED, INVENTORIED, AND IN SAFEKEEPING

E
DESERTER STATUS
☐ 18. MSG ISSUED
19. MSG REF.

F
RETURNED TO MILITARY JURISDICTION 20. HOUR: 1515 21. DATE: 73APR18
☐ 22. DELIVERED
☒ 23. SURRENDERED
☒ 24. DD 616 ISSUED
25. RETURNED TO MILITARY JURISDICTION AT: (ACTIVITY) USS DUARTE (DD-701)
26. UIC 12345
☒ 27. RET. ON BOARD
28. TRANSFERRED TO: (ACTIVITY)
29. UIC

G
☐ 30. DETERMINATION NOT UNAUTHORIZED ABSENCE
31. NAVPERS 1070/606 WHICH REPORTED ABSENCE IN ERROR
☐ 32. ABSENCE EXCUSED UNAVOIDABLE
33. CHARGED NO. DAYS LEAVE (DAY FOR DAY)
SKMC 34. FROM:
35. TO:
☐ 36. DISEASE DUE TO USE OF ALCOHOL/DRUGS
☐ 37. OTHER
☒ 38. ABSENCE NOT EXCUSED
39. CHARGE NO. DAYS LOST TIME (30 DAY MO) 15
40. CHARGE NO. DAYS LOST TIME (DAY FOR DAY) 15
41. CHANGE EAOS TO: 74AUG20
42. CHANGE EXPR ENL TO: 74AUG20

H
☐ 43. ADJUST PREVIOUSLY SUBMITTED 1070/606
44. DATED
☐ 45. CORRECTED INFO ENTERED ABOVE
46. ERRONEOUSLY REPORTED LEAVE
47. ERRONEOUSLY REPORTED LOST TIME (30 DAY MONTH)
48. ERRONEOUSLY REPORTED LOST TIME (DAY FOR DAY)

I
49. AMPLIFYING REMARKS (MAY BE CONTINUED ON REVERSE)

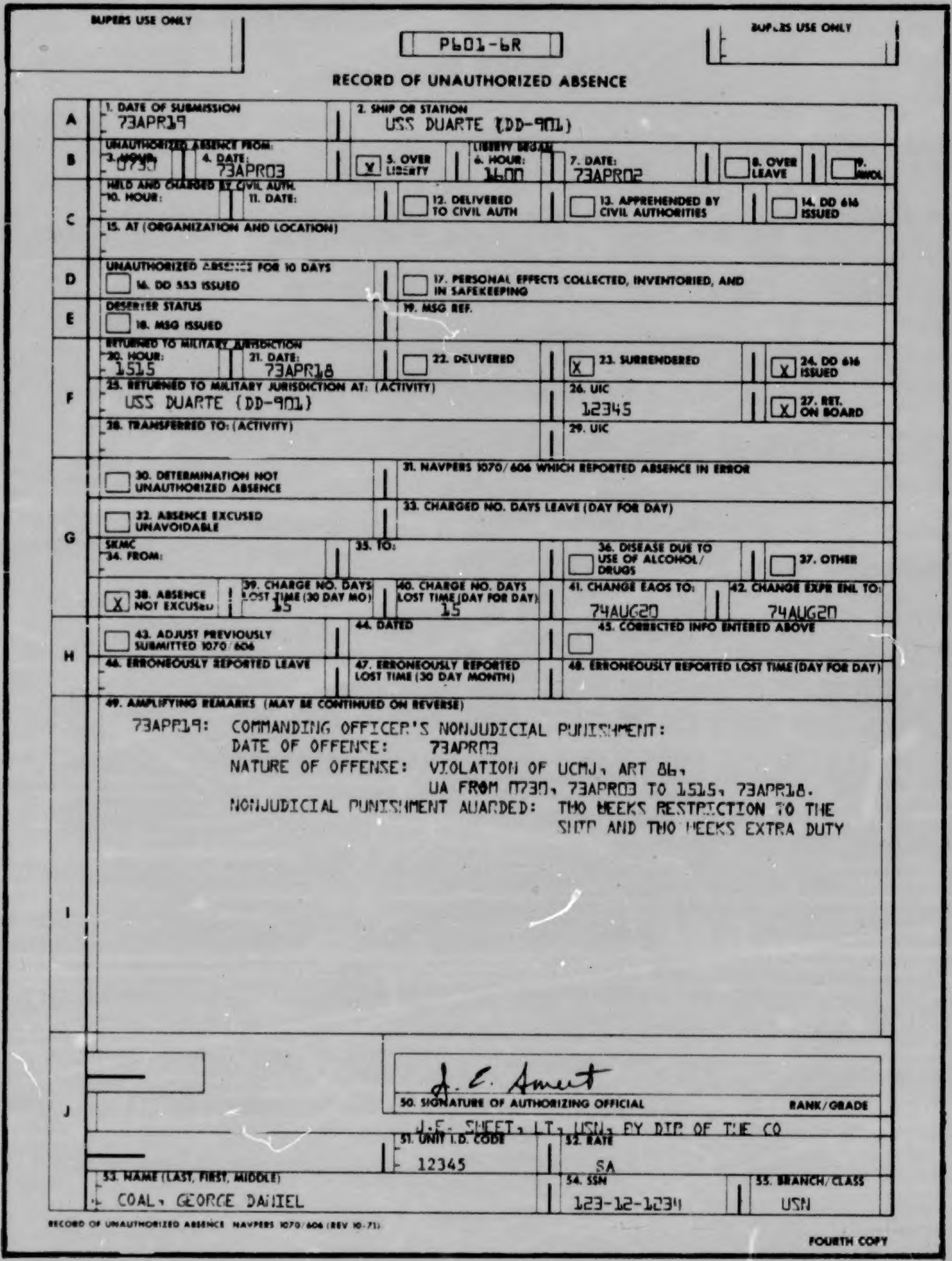
J
J. E. Sweet
50. SIGNATURE OF AUTHORIZING OFFICIAL RANK/GRADE
J.E. SWEET, LT, USN, BY DIR OF THE CO
51. UNIT I.D. CODE 12345
52. RATE SA
53. NAME (LAST, FIRST, MIDDLE) COAL, GEORGE DANIEL
54. SSN 123-12-1234
55. BRANCH/CLASS USN

RECORD OF UNAUTHORIZED ABSENCE NAVPERS 1070/606 (REV 10-71)

THIRD COPY

192.33

Figure 6-11.—Preparation of NAVPERS 1070/606.



BUPERS USE ONLY

P601-6R

BUPERS USE ONLY

RECORD OF UNAUTHORIZED ABSENCE

A
1. DATE OF SUBMISSION: 73APR19
2. SHIP OR STATION: USS DUARTE (DD-901)

B
UNAUTHORIZED ABSENCE FROM:
3. HOUR: 0730
4. DATE: 73APR03
☒ 5. OVER LIBERTY
LIBERTY BEGAN:
6. HOUR: 1600
7. DATE: 73APR02
☐ 8. OVER LEAVE
☐ 9. AWOL

C
HELD AND CHARGED BY CIVIL AUTH.
10. HOUR:
11. DATE:
☐ 12. DELIVERED TO CIVIL AUTH
☐ 13. APPREHENDED BY CIVIL AUTHORITIES
☐ 14. DD 616 ISSUED
15. AT (ORGANIZATION AND LOCATION)

D
UNAUTHORIZED ABSENCE FOR 10 DAYS
☐ 16. DD 553 ISSUED
☐ 17. PERSONAL EFFECTS COLLECTED, INVENTORIED, AND IN SAFEKEEPING

E
DESERTER STATUS
☐ 18. MSG ISSUED
19. MSG REF.

F
RETURNED TO MILITARY JURISDICTION
20. HOUR: 1515
21. DATE: 73APR18
☐ 22. DELIVERED
☒ 23. SURRENDERED
☒ 24. DD 616 ISSUED
25. RETURNED TO MILITARY JURISDICTION AT: (ACTIVITY) USS DUARTE (DD-901)
26. UIC: 12345
☒ 27. RET. ON BOARD
28. TRANSFERRED TO: (ACTIVITY)
29. UIC

G
☐ 30. DETERMINATION NOT UNAUTHORIZED ABSENCE
31. NAVPERS 1070/606 WHICH REPORTED ABSENCE IN ERROR
☐ 32. ABSENCE EXCUSED UNAVOIDABLE
33. CHARGED NO. DAYS LEAVE (DAY FOR DAY)
SKMC
34. FROM:
35. TO:
☐ 36. DISEASE DUE TO USE OF ALCOHOL/DRUGS
☐ 37. OTHER
☒ 38. ABSENCE NOT EXCUSED
39. CHARGE NO. DAYS LOST TIME (30 DAY MO): 15
40. CHARGE NO. DAYS LOST TIME (DAY FOR DAY): 15
41. CHANGE EAOS TO: 74AUG20
42. CHANGE EXPR ENL TO: 74AUG20

H
☐ 43. ADJUST PREVIOUSLY SUBMITTED 1070/606
44. DATED
☐ 45. CORRECTED INFO ENTERED ABOVE
46. ERRONEOUSLY REPORTED LEAVE
47. ERRONEOUSLY REPORTED LOST TIME (30 DAY MONTH)
48. ERRONEOUSLY REPORTED LOST TIME (DAY FOR DAY)

I
49. AMPLIFYING REMARKS (MAY BE CONTINUED ON REVERSE)

73APR19: COMMANDING OFFICER'S NONJUDICIAL PUNISHMENT:
DATE OF OFFENSE: 73APR03
NATURE OF OFFENSE: VIOLATION OF UCMJ, ART 86,
UA FROM 0730, 73APR03 TO 1515, 73APR18.
NONJUDICIAL PUNISHMENT AWARDED: TWO WEEKS RESTRICTION TO THE
SHIP AND TWO WEEKS EXTRA DUTY

J
J. E. Ameet
50. SIGNATURE OF AUTHORIZING OFFICIAL — RANK/GRADE
J.E. SHEET, LT, USN, BY DIR OF THE CO
51. UNIT I.D. CODE: 12345
52. RATE: SA
53. NAME (LAST, FIRST, MIDDLE): COAL, GEORGE DANIEL
54. SSN: 123-12-1234
55. BRANCH/CLASS: USN

RECORD OF UNAUTHORIZED ABSENCE NAVPERS 1070/606 (REV 10-71)

FOURTH COPY

192.34

Figure 6-12.—Preparation of NAVPERS 1070/606.

number, and the article of the *UCMJ* which the offender breached, along with a short summary of the offense and the punishment imposed by the commanding officer. A sample POD note is as follows: Captain's mast was held at 1300 Monday, 21 August 1973. Results were as follows:

a. NEILL A. MOORE, SN, 229-73-5016, Article 86, UA 6 hours, 10 days extra duty

b. JOHN N. ALFORD, SK3, 863-15-4216, Article 92, Failure to obey a lawful order, reduction to SN and a forfeiture of $30 per month for 2 months

## LOG ENTRY

*Instructions for Keeping the Ship's Deck Log*, NAVPERS 15876, prescribes the appropriate log entry for mast results afloat. Such an entry should be substantially in the format shown above for the POD entry, and you should provide this information to the OOD for inclusion in the deck log. Although there is no Navywide requirement for log books ashore, you will find that logs are kept ashore pursuant to local instructions. Unless these local instructions require a different format, you should provide information about mast results to the OOD in the same format that is used afloat.

## UNIT PUNISHMENT BOOK

The Unit Punishment Book (UPB) as defined by *BUPERSMAN* 5030500 contains a record of all punishments imposed by the commanding officer at mast. That record is the completed NAVPERS 1626/7. Specifically included in the UPB are those cases in which the offense is excused or in which a warning but no punishment is given. *BUPERSMAN* does not indicate what disposition is to be made of the NAVPERS 1626/7 when the action is dismissed by the executive officer at screening mast or the commanding officer at captain's mast, but standard practice is to include these report chits in the UPB. SECNAVINST P5212.5 *(Disposal of Navy and Marine Corps Records)* requires that the record be maintained for two years after the action of the commanding officer.

# Chapter 7

# PRETRIAL

This chapter covers all pretrial matters from the time the decision is made to refer a case to a court-martial for trial until the commencement of the proceedings. This includes such things as Article 32 (Pretrial) Investigations, preparation of charge sheets, pretrial agreements, grants of immunity, and matters concerned with the preservation of evidence.

## ARTICLE 32 (PRETRIAL) INVESTIGATIONS

Before the convening authority (CA) may refer any charge or specification to a general court-martial (GCM) for trial, he must see that a pretrial investigation (PTI) is conducted, unless waived by the accused. Do not confuse the PTI with "preliminary inquiry," which is normally conducted into every offense and which is informal in nature. A PTI should be conducted when the charges are so serious that trial, if warranted at all, should be at the GCM level.

### INVESTIGATING OFFICER

The officer detailed to make such an investigation should be a mature officer, preferably of the grade of lieutenant commander or higher, or one with legal training and experience. An officer who has served as investigating officer may not later become military judge or a member either of the prosecution or the defense, nor should he be the accuser in the case he has investigated.

Nowhere is there prescribed a format for the order convening an Article 32 Investigation. It need not be in writing, but it is good practice to use a letter format similar to the one shown in figure 7-1.

### PURPOSE OF PTI

The purposes of the investigation are to inquire into the truth of the matters set forth in the charges, to review the format of the charges, and to obtain information upon which to determine the disposition to be made of the case. It is not the function of the investigating officer to prepare a case against the accused, but to weigh all available facts before arriving at his conclusions. While the investigation must be as brief as is consistent with thoroughness and fairness, the officer conducting the investigation is not limited to examining the witnesses and documentary evidence listed on the charge sheet or mentioned in the papers accompanying the charges. Rather, he should actively seek out any information which might have a bearing on the case. Thoroughness and impartiality are the objectives for which he strives. Recommendations of an investigating officer are advisory only.

### PROCEDURAL RULES

The provisions of the *Manual for Courts-Martial (MCM)* are intended primarily to indicate a proper procedure in the usual case. Variations to meet the circumstances of other cases or exceptional or local conditions are permissible, and should be adopted, provided the spirit and purpose of the law are observed and carried out. Remember that every effort must be made to comply with the requirements of Article 32 of the Code to prevent prejudice to the rights of the accused, which could result in a delay in disposition of the case or disapproval of the proceedings. Similarly, a failure to comply with the provisions of Article 31 of the Code,

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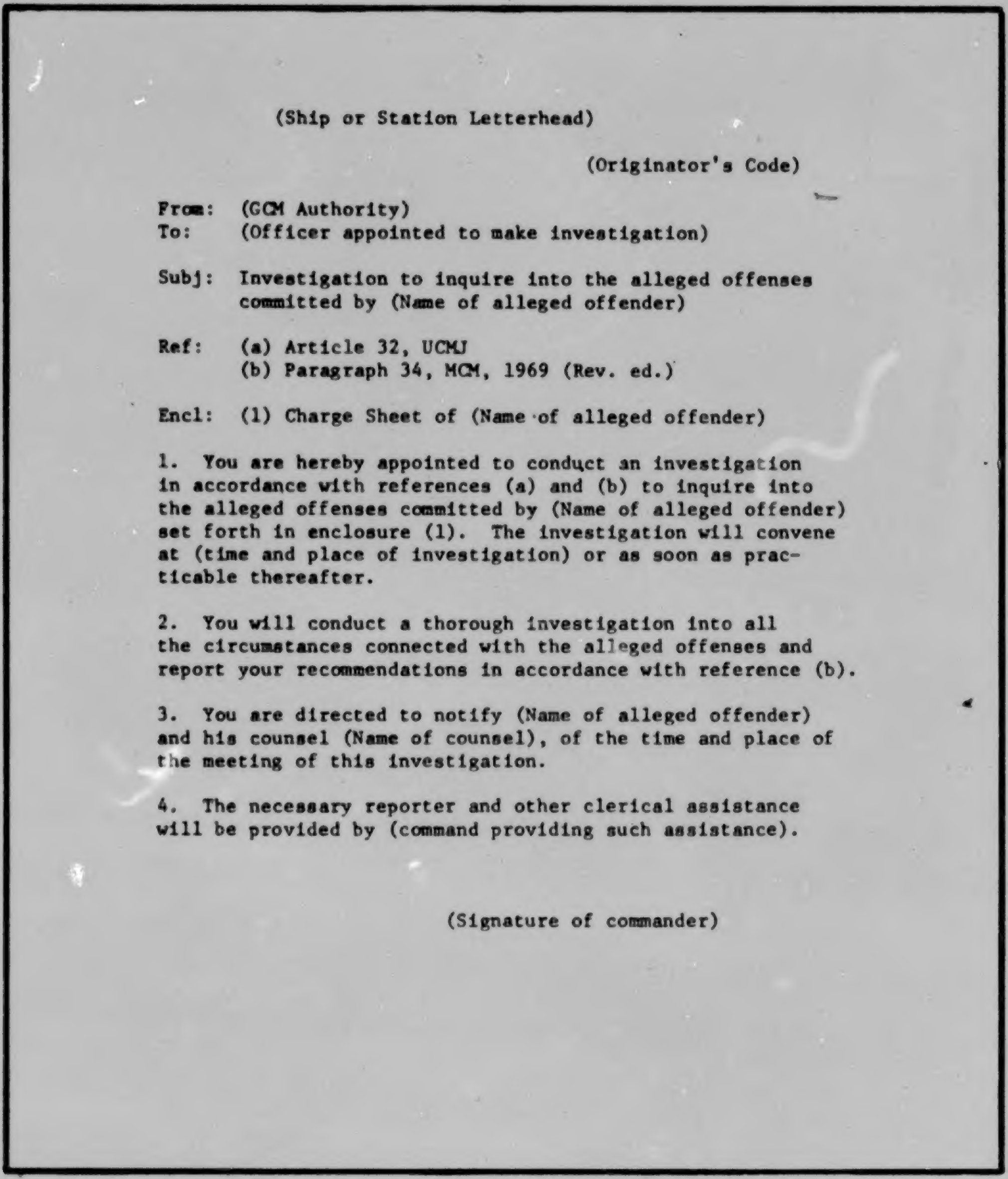


(Ship or Station Letterhead)

(Originator's Code)

From: (GCM Authority)
To: (Officer appointed to make investigation)

Subj: Investigation to inquire into the alleged offenses committed by (Name of alleged offender)

Ref: (a) Article 32, UCMJ
(b) Paragraph 34, MCM, 1969 (Rev. ed.)

Encl: (1) Charge Sheet of (Name of alleged offender)

1. You are hereby appointed to conduct an investigation in accordance with references (a) and (b) to inquire into the alleged offenses committed by (Name of alleged offender) set forth in enclosure (1). The investigation will convene at (time and place of investigation) or as soon as practicable thereafter.

2. You will conduct a thorough investigation into all the circumstances connected with the alleged offenses and report your recommendations in accordance with reference (b).

3. You are directed to notify (Name of alleged offender) and his counsel (Name of counsel), of the time and place of the meeting of this investigation.

4. The necessary reporter and other clerical assistance will be provided by (command providing such assistance).

(Signature of commander)

192.35

Figure 7-1.–Convening Order for Pretrial Investigation.

which deals with compulsory self-incrimination, may result in a miscarriage of justice.

The officer directed to make the investigation begins work as soon as possible after receiving the assignment, so that he may contact witnesses while the events in question are still fresh in mind. Furthermore, if the accused is restrained, Article 33, *UCMJ*, requires that the investigative report be forwarded to the GCM convening authority within eight days after such restraint is imposed upon the accused. If it is not practicable to forward the charges and the report of pretrial investigation within the eight day limit, the PTIO must, not later than the eighth day, submit a letter to the convening authority explaining the reasons for the delay.

### Advising Accused

At the commencement of the investigation, the accused is informed of the following:

- The offense with which he is charged.
- The name of his accuser, and of the witnesses against him.
- The fact that charges against him are about to be investigated.
- His right to be represented by civilian legal counsel or military counsel certified under Article 27(b), *UCMJ*.
- His right to view items of real or documentary evidence considered by the PTIO, including statements of witnesses who are unavailable, to the extent required by fairness to the Government and the accused.
- His right to cross-examine witnesses against him.
- His right to present facts in his own behalf, in defense, extenuation, or mitigation.
- His right to have the investigating officer examine the witnesses requested by him.
- His right to remain silent or present testimony in any form, under oath. Any statement the accused may make may be used against him in the event of his subsequent trial by court-martial.

### Counsel

If the accused requests that he be represented by qualified counsel, the officer referring the charges for investigation takes whatever steps are necessary to provide such counsel. If the accused desires civilian counsel, he must provide such counsel at his own expense. If the accused requests a particular individual military counsel, reasonable steps should be taken to obtain such counsel. In neither event, however, should undue delay of the investigation be permitted. See *MCM*, 1969 (Rev.), paragraph 34. If civilian or requested military counsel is not provided, counsel qualified under Article 27(b), *UCMJ*, must be detailed to represent the accused, unless he waives this right. If delay might result, pretrial counsel may be detailed. It would also be proper for a general court-martial convening authority to designate as pretrial counsel the regularly detailed defense counsel and assistant defense counsel of the GCM convened to sit at a particular station. For additional particulars, the *MCM* should be consulted.

### Witnesses

All available witnesses, including those requested by the accused, are called and examined in the presence of the accused and his counsel, if any. There is no provision for compelling the attendance of witnesses not subject to military jurisdiction, nor is there provision for paying compensation to any witness at a pretrial investigation. Witnesses should be examined on oath or affirmation, and where possible, sign and swear to the truth of the substance of their statements after they have been reduced to writing.

## PTI REPORT

Depending upon what his recommendation is to be, the investigating officer makes either an informal or formal report.

### Informal Report

Should the investigating officer feel that the charges which he has investigated will not be disposed of by trial by general court-martial, he, in the absence of contrary directions, prepares an informal report of his investigation. This informal report is submitted to the officer who ordered the investigation and may be made orally or by a brief memorandum, endorsement, notations on the charge sheet, or other suitable method.

### Formal Report

If, upon completion of the investigation, the investigating officer recommends trial by general court-martial, he normally prepares an Investigating Officer's Report (DD Form 457) in triplicate, and forwards it to the officer who ordered the investigation. Figures 7-2 through 7-5 illustrate the preparation of this report. In this particular investigation the investigating officer had no remarks to enter on page 4.

If the investigating officer so desires, he may submit a formal report by endorsement or letter instead of using DD Form 457, as long as the required documents and items of information are included. Briefly, these items are:

- A statement identifying counsel, if any, and information as to the presence or absence of counsel in those cases where counsel has been requested by the accused.
- A statement as to the substance of the testimony taken on both sides, including any stipulated testimony.
- Any other statements, documents, or matters considered by him in reaching his conclusions, or making his recommendations, or mention of the substance or nature of such items.
- A statement of any reasonable ground for the belief that the accused is, or was at the time of the offense, mentally defective, deranged, or abnormal.
- A statement as to whether essential witnesses will be available in the event of trial. If essential witnesses will not be available, the reasons for nonavailability should be stated.
- The recommendation of the investigating officer as to what disposition should be made of the case.
- The sworn charge sheet.
- Any documentary evidence.
- Any real evidence or a true description thereof.
- Any record of previous convictions of the accused.

## EFFECT OF PRIOR INVESTIGATION

If an investigation of the subject matter of an offense was previously conducted, and if the accused was present at the investigation and was afforded his rights as a party, no further investigation of that charge is necessary unless demanded by the accused after he is informed of the charge. Such demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his own behalf.

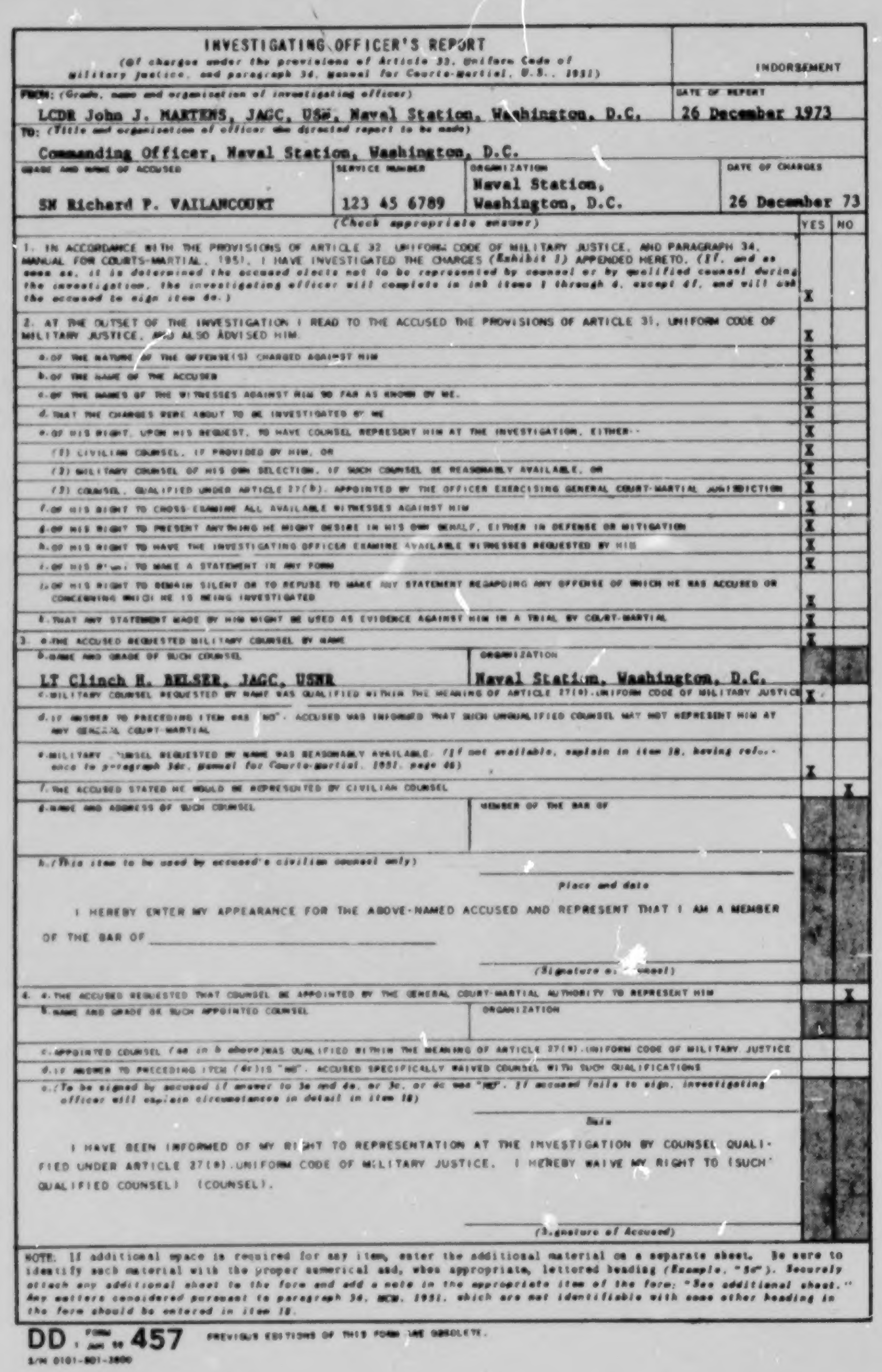
## PRETRIAL PAPERWORK

One of your most important pretrial duties is the preparation of the charge sheet. You will most likely be called upon to draft the charges and specifications, particularly if no judge advocate is available. There are also numerous other matters in which you will play an important role, such as preparation of pretrial agreements and grants of immunity. These items, and others, are discussed below.

## CHARGES AND SPECIFICATIONS

As a matter of practice, the officer conducting a preliminary inquiry on a serious offense usually completes the Charge Sheet (DD Form 458) through page 2, and delivers it with the preliminary inquiry report. Then, if the commanding officer orders a pretrial investigation, the Charge Sheet is available for the investigating officer's use. This formal written accusation, known as the charges and specifications, must be prepared before any accused is tried. The charge lists, by number, the article of the *UCMJ* which the accused has allegedly violated. The specification identifies the accused and gives the details which form the violation–the where, when, and perhaps the how. (See figures 7-6 and 7-7).

Courts-martial have been disapproved on review by higher authority because of faulty, or "fatally defective" specifications, even though the accused has been convicted. The *MCM* contains forms to be used in drafting charges and specifications for almost every offense.



**INVESTIGATING OFFICER'S REPORT**
*(Of charges under the provisions of Article 32, Uniform Code of Military Justice, and paragraph 34, Manual for Courts-Martial, U.S., 1951)*

INDORSEMENT

FROM: *(Grade, name and organization of investigating officer)*
LCDR John J. MARTENS, JAGC, USN, Naval Station, Washington, D.C.

DATE OF REPORT
26 December 1973

TO: *(Title and organization of officer who directed report to be made)*
Commanding Officer, Naval Station, Washington, D.C.

| GRADE AND NAME OF ACCUSED | SERVICE NUMBER | ORGANIZATION | DATE OF CHARGES |
|---|---|---|---|
| SN Richard P. VAILANCOURT | 123 45 6789 | Naval Station,<br>Washington, D.C. | 26 December 73 |

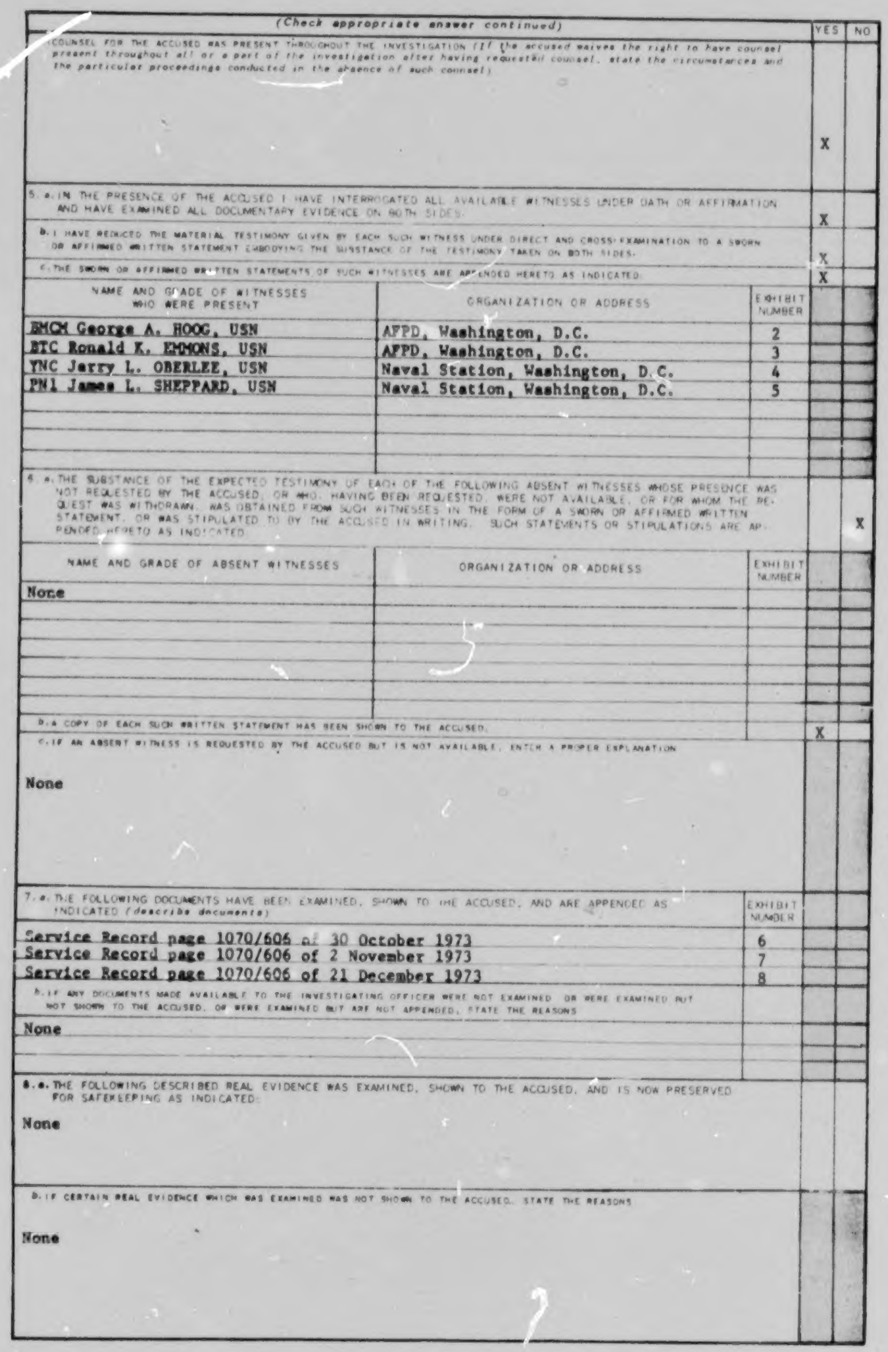
| *(Check appropriate answer)* | YES | NO |
|---|---|---|
| 1. IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 32, UNIFORM CODE OF MILITARY JUSTICE, AND PARAGRAPH 34, MANUAL FOR COURTS-MARTIAL, 1951, I HAVE INVESTIGATED THE CHARGES *(Exhibit 1)* APPENDED HERETO. *(If, and as soon as, it is determined the accused elects not to be represented by counsel or by qualified counsel during the investigation, the investigating officer will complete in ink items 1 through 4, except 4f, and will ask the accused to sign item 4e.)* | X | |
| 2. AT THE OUTSET OF THE INVESTIGATION I READ TO THE ACCUSED THE PROVISIONS OF ARTICLE 31, UNIFORM CODE OF MILITARY JUSTICE, AND ALSO ADVISED HIM: | X | |
| a. OF THE NATURE OF THE OFFENSE(S) CHARGED AGAINST HIM | X | |
| b. OF THE NAME OF THE ACCUSER | X | |
| c. OF THE NAMES OF THE WITNESSES AGAINST HIM SO FAR AS KNOWN BY ME. | X | |
| d. THAT THE CHARGES WERE ABOUT TO BE INVESTIGATED BY ME | X | |
| e. OF HIS RIGHT, UPON HIS REQUEST, TO HAVE COUNSEL REPRESENT HIM AT THE INVESTIGATION, EITHER-- | X | |
| (1) CIVILIAN COUNSEL, IF PROVIDED BY HIM, OR | X | |
| (2) MILITARY COUNSEL OF HIS OWN SELECTION, IF SUCH COUNSEL BE REASONABLY AVAILABLE, OR | X | |
| (3) COUNSEL, QUALIFIED UNDER ARTICLE 27(b), APPOINTED BY THE OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION | X | |
| f. OF HIS RIGHT TO CROSS-EXAMINE ALL AVAILABLE WITNESSES AGAINST HIM | X | |
| g. OF HIS RIGHT TO PRESENT ANYTHING HE MIGHT DESIRE IN HIS OWN BEHALF, EITHER IN DEFENSE OR MITIGATION | X | |
| h. OF HIS RIGHT TO HAVE THE INVESTIGATING OFFICER EXAMINE AVAILABLE WITNESSES REQUESTED BY HIM | X | |
| i. OF HIS RIGHT TO MAKE A STATEMENT IN ANY FORM | X | |
| j. OF HIS RIGHT TO REMAIN SILENT OR TO REFUSE TO MAKE ANY STATEMENT REGARDING ANY OFFENSE OF WHICH HE WAS ACCUSED OR CONCERNING WHICH HE IS BEING INVESTIGATED | X | |
| k. THAT ANY STATEMENT MADE BY HIM MIGHT BE USED AS EVIDENCE AGAINST HIM IN A TRIAL BY COURT-MARTIAL | X | |
| 3. a. THE ACCUSED REQUESTED MILITARY COUNSEL BY NAME | X | |
| b. NAME AND GRADE OF SUCH COUNSEL: LT Clinch H. BELSER, JAGC, USNR<br>ORGANIZATION: Naval Station, Washington, D.C. | | |
| c. MILITARY COUNSEL REQUESTED BY NAME WAS QUALIFIED WITHIN THE MEANING OF ARTICLE 27(b), UNIFORM CODE OF MILITARY JUSTICE | X | |
| d. IF ANSWER TO PRECEDING ITEM WAS "NO", ACCUSED WAS INFORMED THAT SUCH UNQUALIFIED COUNSEL MAY NOT REPRESENT HIM AT ANY GENERAL COURT-MARTIAL | | |
| e. MILITARY COUNSEL REQUESTED BY NAME WAS REASONABLY AVAILABLE. *(If not available, explain in item 18, having reference to paragraph 34c, Manual for Courts-Martial, 1951, page 46)* | X | |
| f. THE ACCUSED STATED HE WOULD BE REPRESENTED BY CIVILIAN COUNSEL | | X |
| g. NAME AND ADDRESS OF SUCH COUNSEL<br>MEMBER OF THE BAR OF | | |
| h. *(This item to be used by accused's civilian counsel only)*<br>______ *Place and date*<br>I HEREBY ENTER MY APPEARANCE FOR THE ABOVE-NAMED ACCUSED AND REPRESENT THAT I AM A MEMBER OF THE BAR OF ______<br>______ *(Signature of counsel)* | | |
| 4. a. THE ACCUSED REQUESTED THAT COUNSEL BE APPOINTED BY THE GENERAL COURT-MARTIAL AUTHORITY TO REPRESENT HIM | | X |
| b. NAME AND GRADE OF SUCH APPOINTED COUNSEL<br>ORGANIZATION | | |
| c. APPOINTED COUNSEL *(as in b above)* WAS QUALIFIED WITHIN THE MEANING OF ARTICLE 27(b), UNIFORM CODE OF MILITARY JUSTICE | | |
| d. IF ANSWER TO PRECEDING ITEM (4c) IS "NO", ACCUSED SPECIFICALLY WAIVED COUNSEL WITH SUCH QUALIFICATIONS | | |
| e. *(To be signed by accused if answer to 3a and 4a, or 3c, or 4c was "NO". If accused fails to sign, investigating officer will explain circumstances in detail in item 18)*<br>______ *Date*<br>I HAVE BEEN INFORMED OF MY RIGHT TO REPRESENTATION AT THE INVESTIGATION BY COUNSEL QUALIFIED UNDER ARTICLE 27(b), UNIFORM CODE OF MILITARY JUSTICE. I HEREBY WAIVE MY RIGHT TO (SUCH QUALIFIED COUNSEL) (COUNSEL).<br>______ *(Signature of Accused)* | | |

NOTE: If additional space is required for any item, enter the additional material on a separate sheet. Be sure to identify such material with the proper numerical and, when appropriate, lettered heading *(Example, "3e")*. *Securely attach any additional sheet to the form and add a note in the appropriate item of the form: "See additional sheet." Any matters considered pursuant to paragraph 34, MCM, 1951, which are not identifiable with some other heading in the form should be entered in item 18.*

DD FORM 1 JAN 56 457 PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.
S/N 0101-801-3800

192.36.1

Figure 7-2.—Investigating Officer's Report (Page 1).



| *(Check appropriate answer continued)* | YES | NO |
|---|---|---|
| COUNSEL FOR THE ACCUSED WAS PRESENT THROUGHOUT THE INVESTIGATION *(If the accused waives the right to have counsel present throughout all or a part of the investigation after having requested counsel, state the circumstances and the particular proceedings conducted in the absence of such counsel)* | X | |
| 5. a. IN THE PRESENCE OF THE ACCUSED I HAVE INTERROGATED ALL AVAILABLE WITNESSES UNDER OATH OR AFFIRMATION AND HAVE EXAMINED ALL DOCUMENTARY EVIDENCE ON BOTH SIDES. | X | |
| b. I HAVE REDUCED THE MATERIAL TESTIMONY GIVEN BY EACH SUCH WITNESS UNDER DIRECT AND CROSS-EXAMINATION TO A SWORN OR AFFIRMED WRITTEN STATEMENT EMBODYING THE SUBSTANCE OF THE TESTIMONY TAKEN ON BOTH SIDES. | X | |
| c. THE SWORN OR AFFIRMED WRITTEN STATEMENTS OF SUCH WITNESSES ARE APPENDED HERETO AS INDICATED: | X | |

| NAME AND GRADE OF WITNESSES WHO WERE PRESENT | ORGANIZATION OR ADDRESS | EXHIBIT NUMBER |
|---|---|---|
| EMCM George A. HOOG, USN | AFPD, Washington, D.C. | 2 |
| BTC Ronald K. EMMONS, USN | AFPD, Washington, D.C. | 3 |
| YNC Jerry L. OBERLEE, USN | Naval Station, Washington, D.C. | 4 |
| PN1 James L. SHEPPARD, USN | Naval Station, Washington, D.C. | 5 |
| | | |
| | | |
| | | |
| | | |

| | YES | NO |
|---|---|---|
| 6. a. THE SUBSTANCE OF THE EXPECTED TESTIMONY OF EACH OF THE FOLLOWING ABSENT WITNESSES WHOSE PRESENCE WAS NOT REQUESTED BY THE ACCUSED, OR WHO, HAVING BEEN REQUESTED, WERE NOT AVAILABLE, OR FOR WHOM THE REQUEST WAS WITHDRAWN, WAS OBTAINED FROM SUCH WITNESSES IN THE FORM OF A SWORN OR AFFIRMED WRITTEN STATEMENT, OR WAS STIPULATED TO BY THE ACCUSED IN WRITING. SUCH STATEMENTS OR STIPULATIONS ARE APPENDED HERETO AS INDICATED. | | X |

| NAME AND GRADE OF ABSENT WITNESSES | ORGANIZATION OR ADDRESS | EXHIBIT NUMBER |
|---|---|---|
| None | | |
| | | |
| | | |
| | | |
| | | |
| | | |

| | YES | NO |
|---|---|---|
| b. A COPY OF EACH SUCH WRITTEN STATEMENT HAS BEEN SHOWN TO THE ACCUSED. | X | |

c. IF AN ABSENT WITNESS IS REQUESTED BY THE ACCUSED BUT IS NOT AVAILABLE, ENTER A PROPER EXPLANATION

None

| 7. a. THE FOLLOWING DOCUMENTS HAVE BEEN EXAMINED, SHOWN TO THE ACCUSED, AND ARE APPENDED AS INDICATED *(describe documents)* | EXHIBIT NUMBER |
|---|---|
| Service Record page 1070/606 of 30 October 1973 | 6 |
| Service Record page 1070/606 of 2 November 1973 | 7 |
| Service Record page 1070/606 of 21 December 1973 | 8 |

b. IF ANY DOCUMENTS MADE AVAILABLE TO THE INVESTIGATING OFFICER WERE NOT EXAMINED OR WERE EXAMINED BUT NOT SHOWN TO THE ACCUSED, OR WERE EXAMINED BUT ARE NOT APPENDED, STATE THE REASONS

None

8. a. THE FOLLOWING DESCRIBED REAL EVIDENCE WAS EXAMINED, SHOWN TO THE ACCUSED, AND IS NOW PRESERVED FOR SAFEKEEPING AS INDICATED:

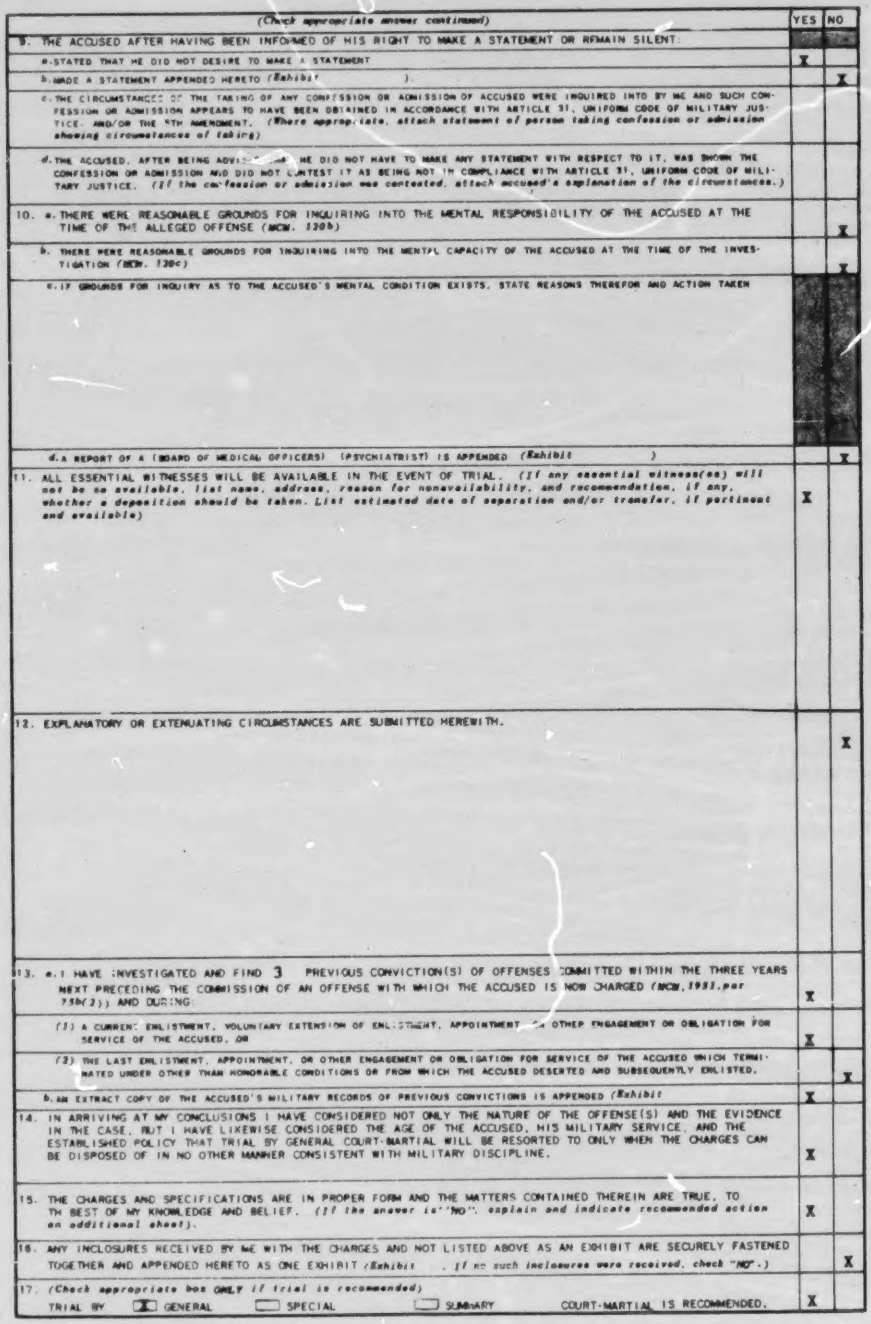
None

b. IF CERTAIN REAL EVIDENCE WHICH WAS EXAMINED WAS NOT SHOWN TO THE ACCUSED, STATE THE REASONS

None

192.36.2

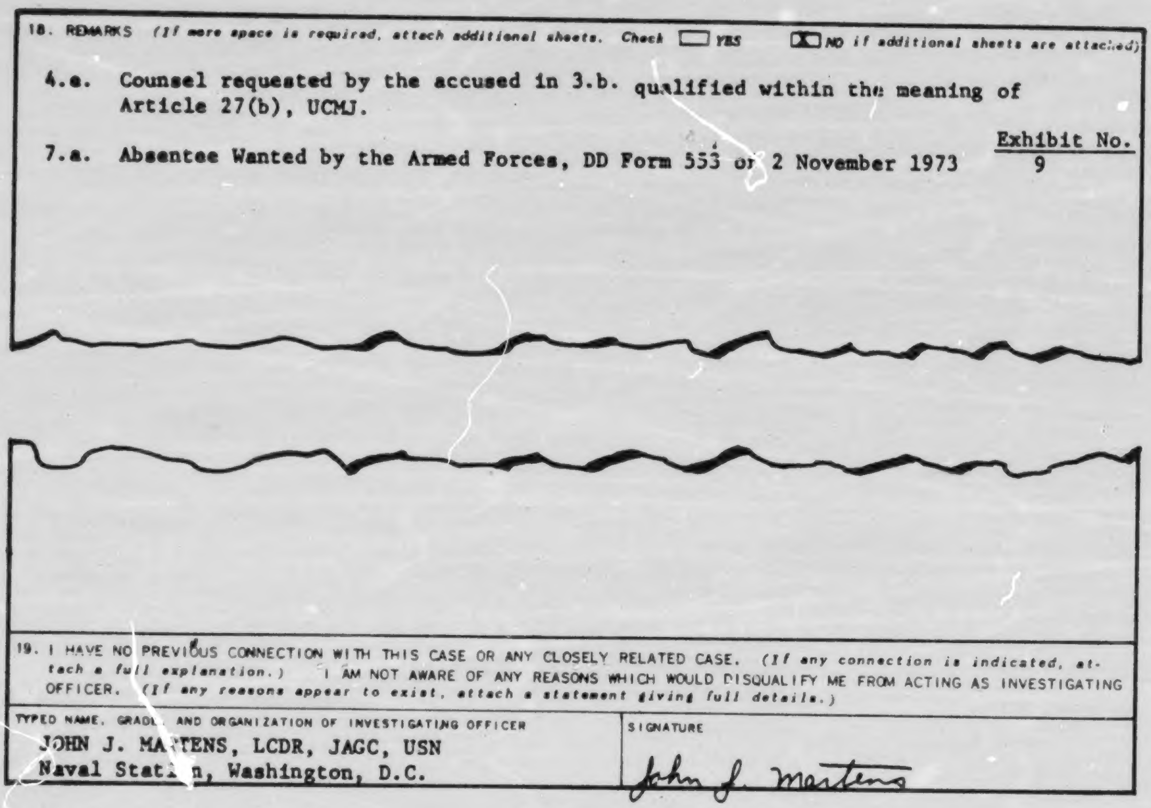
Figure 7-3.—Investigating Officer's Report (Page 2).



| *(Check appropriate answer continued)* | YES | NO |
|---|---|---|
| 9. THE ACCUSED AFTER HAVING BEEN INFORMED OF HIS RIGHT TO MAKE A STATEMENT OR REMAIN SILENT: | | |
| a. STATED THAT HE DID NOT DESIRE TO MAKE A STATEMENT | X | |
| b. MADE A STATEMENT APPENDED HERETO *(Exhibit )*. | | X |
| c. THE CIRCUMSTANCES OF THE TAKING OF ANY CONFESSION OR ADMISSION OF ACCUSED WERE INQUIRED INTO BY ME AND SUCH CONFESSION OR ADMISSION APPEARS TO HAVE BEEN OBTAINED IN ACCORDANCE WITH ARTICLE 31, UNIFORM CODE OF MILITARY JUSTICE, AND/OR THE 5TH AMENDMENT. *(Where appropriate, attach statement of person taking confession or admission showing circumstances of taking)* | | |
| d. THE ACCUSED, AFTER BEING ADVISED THAT HE DID NOT HAVE TO MAKE ANY STATEMENT WITH RESPECT TO IT, WAS SHOWN THE CONFESSION OR ADMISSION AND DID NOT CONTEST IT AS BEING NOT IN COMPLIANCE WITH ARTICLE 31, UNIFORM CODE OF MILITARY JUSTICE. *(If the confession or admission was contested, attach accused's explanation of the circumstances.)* | | |
| 10. a. THERE WERE REASONABLE GROUNDS FOR INQUIRING INTO THE MENTAL RESPONSIBILITY OF THE ACCUSED AT THE TIME OF THE ALLEGED OFFENSE *(MCM, 120b)* | | X |
| b. THERE WERE REASONABLE GROUNDS FOR INQUIRING INTO THE MENTAL CAPACITY OF THE ACCUSED AT THE TIME OF THE INVESTIGATION *(MCM, 120c)* | | X |
| c. IF GROUNDS FOR INQUIRY AS TO THE ACCUSED'S MENTAL CONDITION EXISTS, STATE REASONS THEREFOR AND ACTION TAKEN | | |
| d. A REPORT OF A (BOARD OF MEDICAL OFFICERS) (PSYCHIATRIST) IS APPENDED *(Exhibit )* | | X |
| 11. ALL ESSENTIAL WITNESSES WILL BE AVAILABLE IN THE EVENT OF TRIAL. *(If any essential witness(es) will not be so available, list name, address, reason for nonavailability, and recommendation, if any, whether a deposition should be taken. List estimated date of separation and/or transfer, if pertinent and available)* | X | |
| 12. EXPLANATORY OR EXTENUATING CIRCUMSTANCES ARE SUBMITTED HEREWITH. | | X |
| 13. a. I HAVE INVESTIGATED AND FIND 3 PREVIOUS CONVICTION(S) OF OFFENSES COMMITTED WITHIN THE THREE YEARS NEXT PRECEDING THE COMMISSION OF AN OFFENSE WITH WHICH THE ACCUSED IS NOW CHARGED *(MCM, 1951, par 75b(2))* AND DURING: | X | |
| *(1)* A CURRENT ENLISTMENT, VOLUNTARY EXTENSION OF ENLISTMENT, APPOINTMENT OR OTHER ENGAGEMENT OR OBLIGATION FOR SERVICE OF THE ACCUSED, OR | X | |
| *(2)* THE LAST ENLISTMENT, APPOINTMENT, OR OTHER ENGAGEMENT OR OBLIGATION FOR SERVICE OF THE ACCUSED WHICH TERMINATED UNDER OTHER THAN HONORABLE CONDITIONS OR FROM WHICH THE ACCUSED DESERTED AND SUBSEQUENTLY ENLISTED. | | X |
| b. AN EXTRACT COPY OF THE ACCUSED'S MILITARY RECORDS OF PREVIOUS CONVICTIONS IS APPENDED *(Exhibit* | X | |
| 14. IN ARRIVING AT MY CONCLUSIONS I HAVE CONSIDERED NOT ONLY THE NATURE OF THE OFFENSE(S) AND THE EVIDENCE IN THE CASE, BUT I HAVE LIKEWISE CONSIDERED THE AGE OF THE ACCUSED, HIS MILITARY SERVICE, AND THE ESTABLISHED POLICY THAT TRIAL BY GENERAL COURT-MARTIAL WILL BE RESORTED TO ONLY WHEN THE CHARGES CAN BE DISPOSED OF IN NO OTHER MANNER CONSISTENT WITH MILITARY DISCIPLINE. | X | |
| 15. THE CHARGES AND SPECIFICATIONS ARE IN PROPER FORM AND THE MATTERS CONTAINED THEREIN ARE TRUE, TO THE BEST OF MY KNOWLEDGE AND BELIEF. *(If the answer is "NO", explain and indicate recommended action on additional sheet)*. | X | |
| 16. ANY INCLOSURES RECEIVED BY ME WITH THE CHARGES AND NOT LISTED ABOVE AS AN EXHIBIT ARE SECURELY FASTENED TOGETHER AND APPENDED HERETO AS ONE EXHIBIT *(Exhibit . If no such inclosures were received, check "NO".)* | | X |
| 17. *(Check appropriate box ONLY if trial is recommended)*<br>TRIAL BY ☒ GENERAL ☐ SPECIAL ☐ SUMMARY COURT-MARTIAL IS RECOMMENDED. | X | |

192.36.3

Figure 7-4.—Investigating Officer's Report (Page 3).



18. REMARKS *(If more space is required, attach additional sheets. Check* ☐ *YES* ☒ *NO if additional sheets are attached)*

4.e. Counsel requested by the accused in 3.b. qualified within the meaning of Article 27(b), UCMJ.

| | Exhibit No. |
|---|---|
| 7.a. Absentee Wanted by the Armed Forces, DD Form 553 of 2 November 1973 | 9 |

19. I HAVE NO PREVIOUS CONNECTION WITH THIS CASE OR ANY CLOSELY RELATED CASE. *(If any connection is indicated, attach a full explanation.)* ☐ I AM NOT AWARE OF ANY REASONS WHICH WOULD DISQUALIFY ME FROM ACTING AS INVESTIGATING OFFICER. *(If any reasons appear to exist, attach a statement giving full details.)*

| TYPED NAME, GRADE, AND ORGANIZATION OF INVESTIGATING OFFICER | SIGNATURE |
|---|---|
| JOHN J. MARTENS, LCDR, JAGC, USN<br>Naval Station, Washington, D.C. | John J. Martens |

192.36.4

Figure 7-5.—Investigating Officer's Report (Page 4).

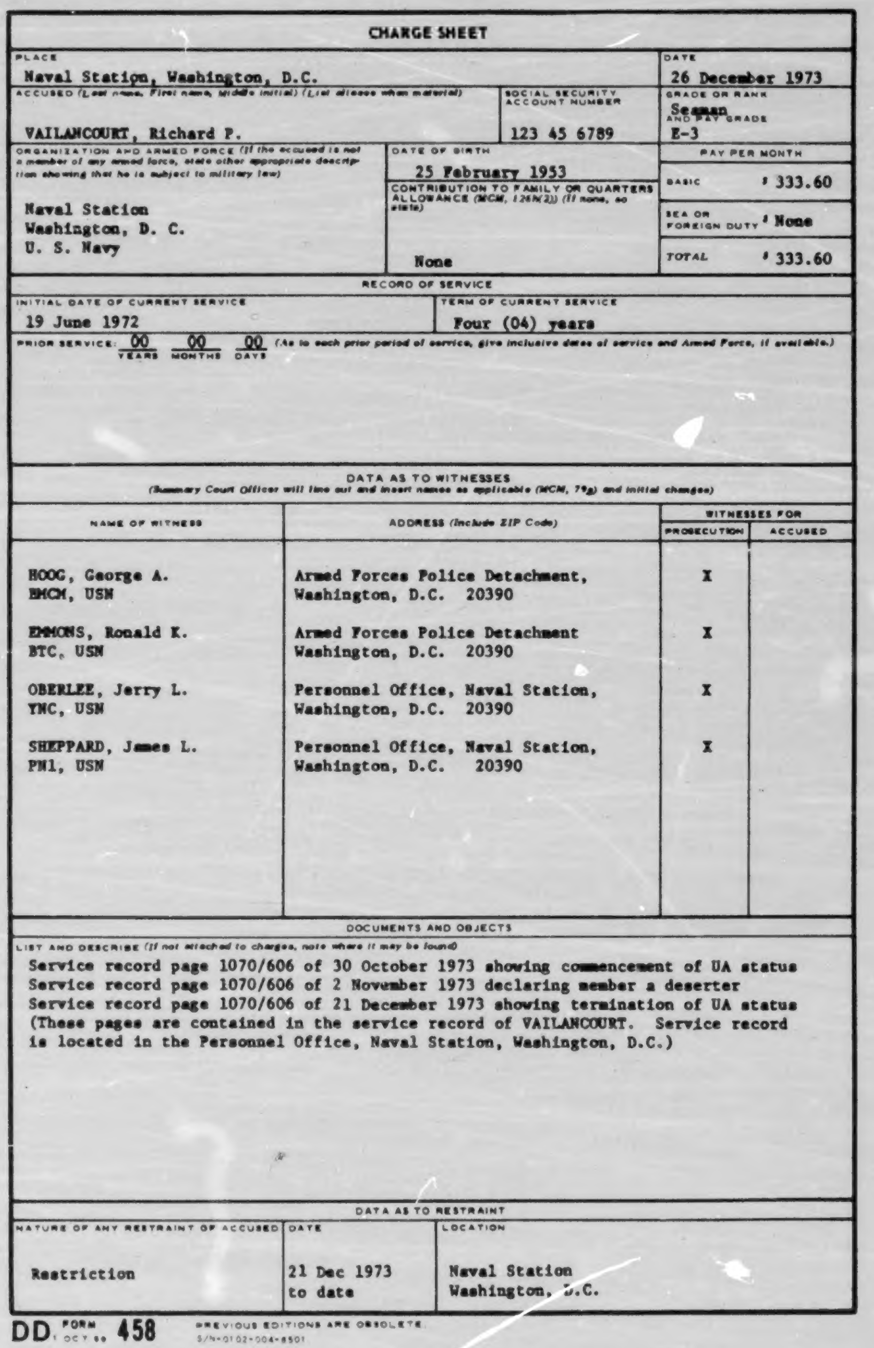
These forms should not be changed. Other words may sound more impressive, but the suggested forms should be used.

### Numbering of Charges and Specifications

When there is more than one charge, the charges should be numbered, using the Roman numerals I, II, and so on. When there is more than one specification under a charge, the specifications under that charge are numbered, using the Arabic numerals, 1, 2, and so on. Additional charges are numbered in the same manner. A single added charge is designated "Additional Charge," but if more than one, they are numbered "Additional Charge I," "Additional Charge II," and so on. Specifications under additional charges are designated as shown above. The term "Additional" is not used in connection with the specifications. See Appendix I, page 386 for an illustration of how the charges and specifications should be set down on the charge sheet.

### Drafting of Charges

The charge should be appropriate to all specifications under it, and is written: "Violation of the Uniform Code of Military Justice, Article___," giving the number of the article.



## CHARGE SHEET

PLACE
Naval Station, Washington, D.C.

DATE
26 December 1973

ACCUSED (Last name, First name, middle initial) (List aliases when material)
VAILANCOURT, Richard P.

SOCIAL SECURITY ACCOUNT NUMBER
123 45 6789

GRADE OR RANK
Seaman
AND PAY GRADE
E-3

ORGANIZATION AND ARMED FORCE (If the accused is not a member of any armed force, state other appropriate description showing that he is subject to military law)
Naval Station
Washington, D. C.
U. S. Navy

DATE OF BIRTH
25 February 1953

CONTRIBUTION TO FAMILY OR QUARTERS ALLOWANCE (MCM, 126h(2)) (If none, so state)
None

PAY PER MONTH
BASIC $ 333.60
SEA OR FOREIGN DUTY $ None
TOTAL $ 333.60

RECORD OF SERVICE

INITIAL DATE OF CURRENT SERVICE
19 June 1972

TERM OF CURRENT SERVICE
Four (04) years

PRIOR SERVICE: 00 YEARS 00 MONTHS 00 DAYS (As to each prior period of service, give inclusive dates of service and Armed Force, if available.)

DATA AS TO WITNESSES
(Summary Court Officer will line out and insert names as applicable (MCM, 79g) and initial changes)

| NAME OF WITNESS | ADDRESS (Include ZIP Code) | WITNESSES FOR | |
|---|---|---|---|
| | | PROSECUTION | ACCUSED |
| HOOG, George A.<br>BMCM, USN | Armed Forces Police Detachment,<br>Washington, D.C. 20390 | X | |
| EMMONS, Ronald K.<br>BTC, USN | Armed Forces Police Detachment<br>Washington, D.C. 20390 | X | |
| OBERLEE, Jerry L.<br>YNC, USN | Personnel Office, Naval Station,<br>Washington, D.C. 20390 | X | |
| SHEPPARD, James L.<br>PN1, USN | Personnel Office, Naval Station,<br>Washington, D.C. 20390 | X | |

DOCUMENTS AND OBJECTS

LIST AND DESCRIBE (If not attached to charges, note where it may be found)
Service record page 1070/606 of 30 October 1973 showing commencement of UA status
Service record page 1070/606 of 2 November 1973 declaring member a deserter
Service record page 1070/606 of 21 December 1973 showing termination of UA status
(These pages are contained in the service record of VAILANCOURT. Service record is located in the Personnel Office, Naval Station, Washington, D.C.)

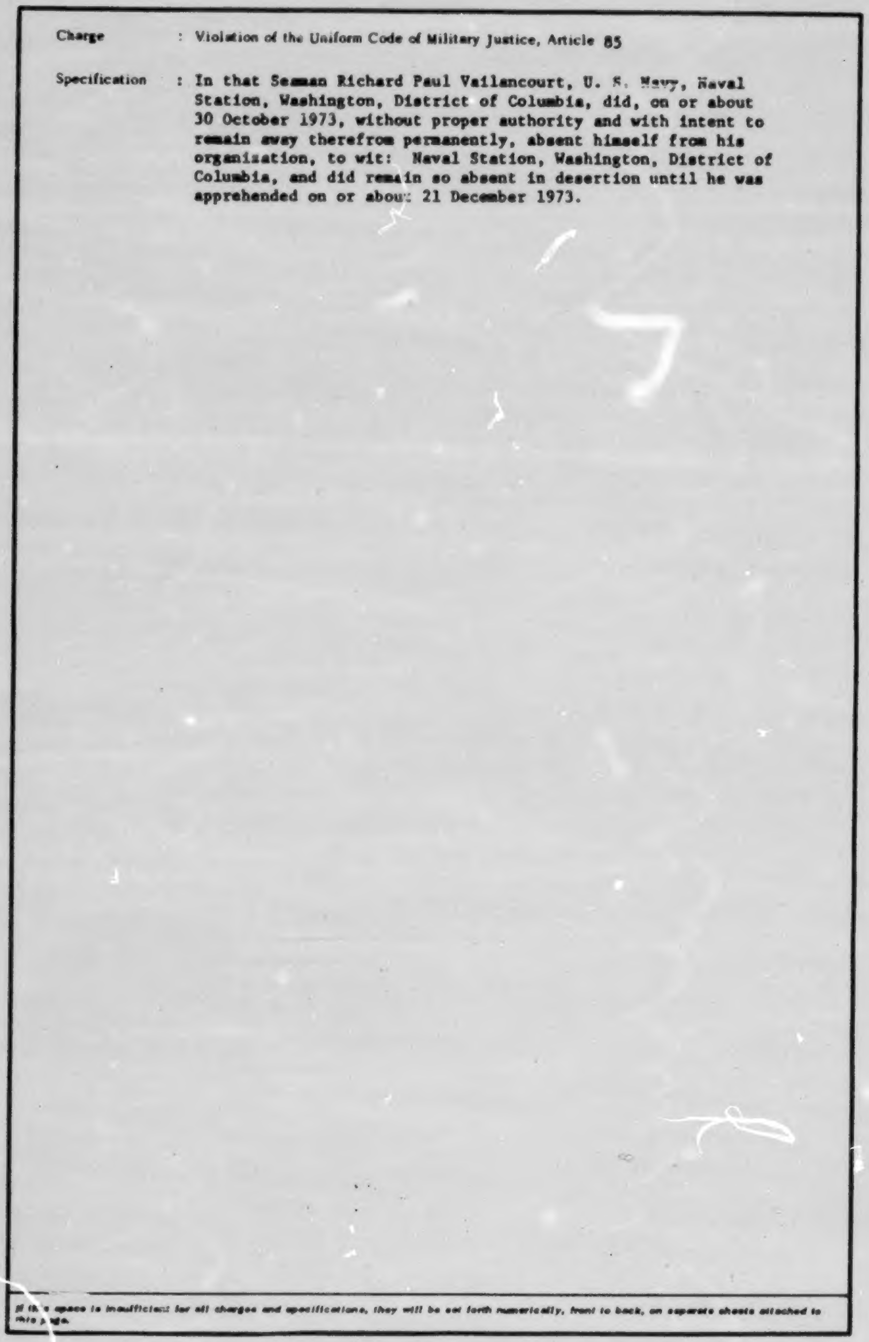
DATA AS TO RESTRAINT

| NATURE OF ANY RESTRAINT OF ACCUSED | DATE | LOCATION |
|---|---|---|
| Restriction | 21 Dec 1973<br>to date | Naval Station<br>Washington, D.C. |

DD FORM 1 OCT 69 458 PREVIOUS EDITIONS ARE OBSOLETE.
S/N-0102-004-8501

192.37.1

Figure 7-6.—Charge Sheet (Page 1).



**Charge** : Violation of the Uniform Code of Military Justice, Article 85

**Specification** : In that Seaman Richard Paul Vailancourt, U. S. Navy, Naval Station, Washington, District of Columbia, did, on or about 30 October 1973, without proper authority and with intent to remain away therefrom permanently, absent himself from his organization, to wit: Naval Station, Washington, District of Columbia, and did remain so absent in desertion until he was apprehended on or about 21 December 1973.

*If this space is insufficient for all charges and specifications, they will be set forth numerically, front to back, on separate sheets attached to this page.*

Figure 7-7.—Charge Sheet (Page 2).

192.37.2

## Drafting of Specifications

A specification should be brief but complete, and must contain all of the following essential elements:

- Rate of accused.
- Name of accused.
- Branch of service of accused.
- Unit of accused.
- Time of alleged offense–based on 24 hour clock.
- Place of alleged offense.
- Statement of facts constituting the alleged offense.

In pleading these elements on the charge sheet, you should adhere to certain rules. These rules are as follows:

- In pleading rate, spell out the words instead of using the abbreviation for the rating. Example: Yeoman Third Class, Aviation Boatswain's Mate F (Fuels) Second Class, Fireman, Dentalman, et cetera.
- The accused's first name, middle initial or name, and last name should be set forth in that order. Capitalize the first letters in each name only. Example: Seaman John Paul Jones, or Seaman John P. Jones. The accused should be charged under the name he admits to be his true name. If his true name is unknown, you would use the name under which he first enlisted. Example: In that Private John P. Smith, alias Seaman John P. Jones****.
- The social security number (SSN) of the accused should NEVER be alleged.
- Branch of service–show as U.S. Navy, U.S. Naval Reserve, U.S. Marine Corps, U.S. Marine Corps Reserve, U.S. Fleet Reserve, or U.S. Navy (retired).
- Unit or organization–show only the name of a ship; the hull number should not be alleged. Only the first letter of the ship's name is capitalized. Example: USS Midway. In alleging shore or oversea activities, give the name and the location of the activity. In the case of overseas activities, you may use FPO or APO numbers in lieu of the physical location. Roman or Arabic numerals, where a part of the title of the unit, may also be used.
- Members of Reserve components–in the case of reserve personnel on active duty, the specification MUST contain the phrase "on active duty." Since Reservists not on active duty are not subject to the *UCMJ*, failure to show that the member is on active duty is sufficient cause to raise the question of jurisdiction.
- In alleging times and dates, you should use a 24 hour clock, that is, time runs 0100, 0200, 0300, and so on, up to 2400. Where the date or exact time is uncertain, you should use the phrase "at or about" or "on or about." Example: "In that *** did, at or about 1[illegible]00, on or about 15 November 1973 ***."
- In alleging the place of the offense, if the offense occurred at the accused's unit, allege as "on board said ship" or "at said base." When the offense occurs at a place other than the accused's unit, you should describe the location of that place in sufficient detail so that no question arises as to its location. Example: "At or near the intersection of Second and Main Streets in the town of Pensacola, Florida."
- Statement of facts constituting the offense–before drafting the specification, you should analyze the facts and refer to the pertinent paragraphs of the *MCM*, in which appear the elements of proof of various offenses, and examples of the forms of specifications. All elements of an offense should be included. Any intent, or state of mind such as guilty knowledge, expressly made an essential element of an offense, must be alleged. Thus, where appropriate, the offense should be alleged as having been committed knowingly, willfully, wrongfully, unlawfully, without authority, or dishonorably, and so on. One specification should not allege more than one offense. However, if two acts or a series of acts constitute one offense, they may be alleged together. For the vast majority of cases, you will be able to use the suggested forms and wording contained in Appendix 6c of the *MCM*. For those few cases where no form is shown, you must ensure that you cover all the elements of the offense in the specification.
- Abbreviations–"U.S." and "USS" are permissible. Other abbreviations should not be used in specifications.

### Sufficiency of Specification

If a specification of which the accused has been found guilty fails to allege any offense under the Code, the proceedings as to that specification are a nullity and must be declared invalid. If a specification alleges an offense under the Code, the proceedings as to that specification should not be held invalid solely because the specification is defective; however, if it appears from the record that the accused was in fact misled by the defect or that his substantial rights were in fact otherwise materially prejudiced thereby, appropriate corrective action must be taken. The test of the sufficiency of a specification is not whether it could have been made more definite and certain, but whether the facts alleged therein and reasonably implied therefrom set forth the offense sought to be charged with sufficient clarity to apprise the accused of what he must defend against. Whether the record is sufficient to enable him to avoid a second prosecution for the same offense must also be considered in applying this test.

## CHARGES MUST BE SWORN TO

Once the charges and specifications have been prepared, they are signed and sworn to by the accuser before an officer authorized to administer oaths, and must state both that the signer has personal knowledge of, or has investigated the charges set forth, and that they are true in fact to the best of his knowledge and belief. The accuser must be a person subject to the *UCMJ*. Usually, the CO has the officer who conducted the preliminary investigation sign the charges if the facts brought out by the investigation seem to justify doing so. Figure 7-8 is an example of a completed page 3 of the charge sheet showing how charges are sworn to.

## STATUTE OF LIMITATIONS

Except for certain offenses, there is a time limit specified by Article 43, UCMJ, within which a person may be charged with an offense. Unless the statute of limitations has been tolled, extended, or suspended, or unless the offense is one for which there is no limitation, sworn charges must be received by the officer exercising summary court-martial jurisdiction over the command within the specified time. This period of time depends on the nature of the offense and is either two or three years after commission of the offense.

Certain offenses, such as wrongful cohabitation, are continuing offenses, and the accused cannot avail himself of the statute of limitations for any part of continuing offenses not within the bar of the statute. Absence without leave, desertion, and fraudulent enlistment are not continuing offenses and are committed, respectively, on the date the person absents himself, deserts, or first received pay or allowances under the enlistment. See Article 43, *UCMJ*.

### Date Charges Received by SCM

Immediately upon receiving the sworn charges, the officer exercising summary court-martial jurisdiction over the command must cause the hour and date of receipt to be entered in the space provided on page 3 of the charge sheet. This date is important as it fixes the end of the period of time which is to be considered in determining whether the prosecution of the accused is barred by the statute of limitations.

In determining whether the statute of limitations has expired in a case, certain periods of time must be excluded in the computation of the period of limitation. Periods in which the accused was absent from territory in which the United States has the authority to apprehend him, or in which he is in the custody of civil authorities, or in the hands of the enemy, must be excluded in the computation.

## FORMER JEOPARDY

What is former jeopardy? Perhaps the best way to explain former jeopardy is by way of an example. Let's suppose that an accused is brought to trial on charges for which he has previously been tried and on which the conviction has become "final" in the sense of Article 44, *UCMJ*, that is, after review of the case has been fully completed. At this trial, he may raise

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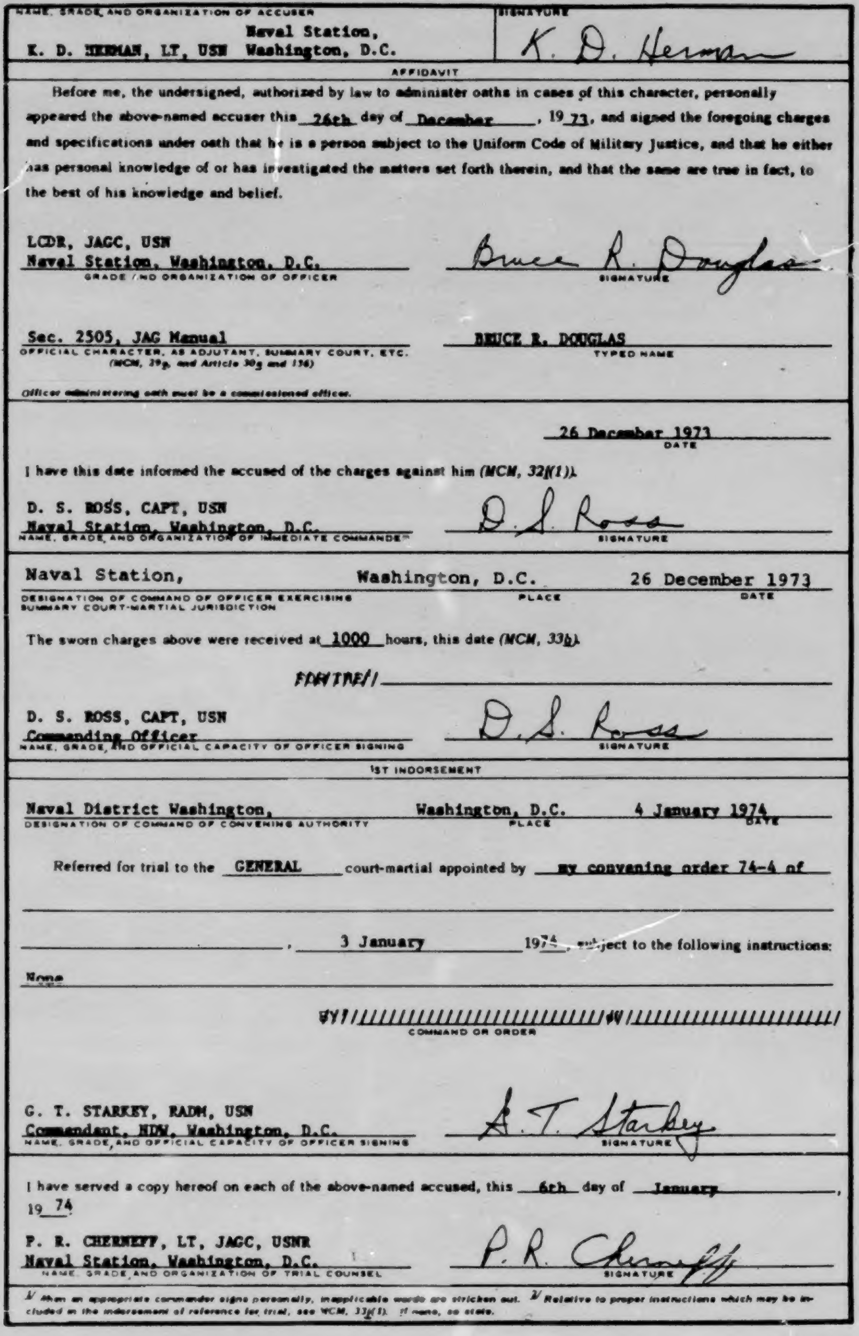


NAME, GRADE, AND ORGANIZATION OF ACCUSER
K. D. HERMAN, LT, USN Naval Station, Washington, D.C.

SIGNATURE
K. D. Herman

AFFIDAVIT

Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this 26th day of December, 1973, and signed the foregoing charges and specifications under oath that he is a person subject to the Uniform Code of Military Justice, and that he either has personal knowledge of or has investigated the matters set forth therein, and that the same are true in fact, to the best of his knowledge and belief.

LCDR, JAGC, USN
Naval Station, Washington, D.C.
GRADE AND ORGANIZATION OF OFFICER

Bruce R. Douglas
SIGNATURE

Sec. 2505, JAG Manual
OFFICIAL CHARACTER, AS ADJUTANT, SUMMARY COURT, ETC. (MCM, 29g, and Article 30g and 136)

BRUCE R. DOUGLAS
TYPED NAME

*Officer administering oath must be a commissioned officer.*

26 December 1973
DATE

I have this date informed the accused of the charges against him *(MCM, 32f(1))*.

D. S. ROSS, CAPT, USN
Naval Station, Washington, D.C.
NAME, GRADE, AND ORGANIZATION OF IMMEDIATE COMMANDER

D. S. Ross
SIGNATURE

Naval Station, Washington, D.C. 26 December 1973
DESIGNATION OF COMMAND OF OFFICER EXERCISING SUMMARY COURT-MARTIAL JURISDICTION — PLACE — DATE

The sworn charges above were received at 1000 hours, this date *(MCM, 33b)*.

~~FOR THE~~ 1/

D. S. ROSS, CAPT, USN
Commanding Officer
NAME, GRADE, AND OFFICIAL CAPACITY OF OFFICER SIGNING

D. S. Ross
SIGNATURE

1ST INDORSEMENT

Naval District Washington, Washington, D.C. 4 January 1974
DESIGNATION OF COMMAND OF CONVENING AUTHORITY — PLACE — DATE

Referred for trial to the GENERAL court-martial appointed by my convening order 74-4 of

, 3 January 1974, subject to the following instructions: 2/

None

~~BY~~ ~~BY~~ 1/
COMMAND OR ORDER

G. T. STARKEY, RADM, USN
Commandant, NDW, Washington, D.C.
NAME, GRADE, AND OFFICIAL CAPACITY OF OFFICER SIGNING

G. T. Starkey
SIGNATURE

I have served a copy hereof on each of the above-named accused, this 6th day of January, 1974.

P. R. CHERNEFF, LT, JAGC, USNR
Naval Station, Washington, D.C.
NAME, GRADE, AND ORGANIZATION OF TRIAL COUNSEL

P. R. Cherneff
SIGNATURE

*1/ When an appropriate commander signs personally, inapplicable words are stricken out. 2/ Relative to proper instructions which may be included in the indorsement of reference for trial, see MCM, 33j(1). If none, so state.*

192.37.3

Figure 7-8.—Charge Sheet (Page 3).

the issue of former jeopardy to bar being tried a second time for the same offense. If, however, the conviction has not become final, the convening authority, the Court of Military Review, or the Court of Military Appeals may set aside a conviction and authorize a rehearing or another trial, except where such action is based upon lack of sufficient evidence. Such action would not constitute former jeopardy. Basically, former jeopardy connotes a rule of law that no person can be tried for the same offense by the same sovereign a second time without his consent. But as we examine former jeopardy a little closer, you will probably be surprised to learn that a person may be tried and punished by more than one jurisdiction for the same offense. This is NOT former, or as it is sometimes called, double jeopardy. It is the policy of the SECNAV, however, that persons who have been tried in a domestic or foreign court, whether convicted or acquitted, shall not be tried by court-martial for the same offense, except in those unusual cases where trial by court-martial is considered essential in the interests of justice, discipline, or proper administration of the Navy. See Section 0107e of the *JAG Manual* for a discussion of this policy.

### Jurisdiction

The commission of certain acts may constitute an offense under the *UCMJ* and also an offense under other Federal criminal statutes. These offenses are considered to be the same in the sense of Article 44, *UCMJ*, and the same acts constituting an offense against the United States cannot, after the accused has been tried by a court deriving its authority from the United States, be made the basis of a trial by court-martial for the same acts without the consent of the accused. However, the commission of certain acts may also constitute an offense under the *UCMJ* and an offense under State or foreign law. These offenses are not the same within the sense of Article 44, *UCMJ*. Thus, trial by a State or foreign court does not bar a subsequent trial by court-martial. However, as mentioned above, Navy policy is NOT to try such cases at courts-martial, except in unusual situations.

## PRETRIAL RESTRAINT

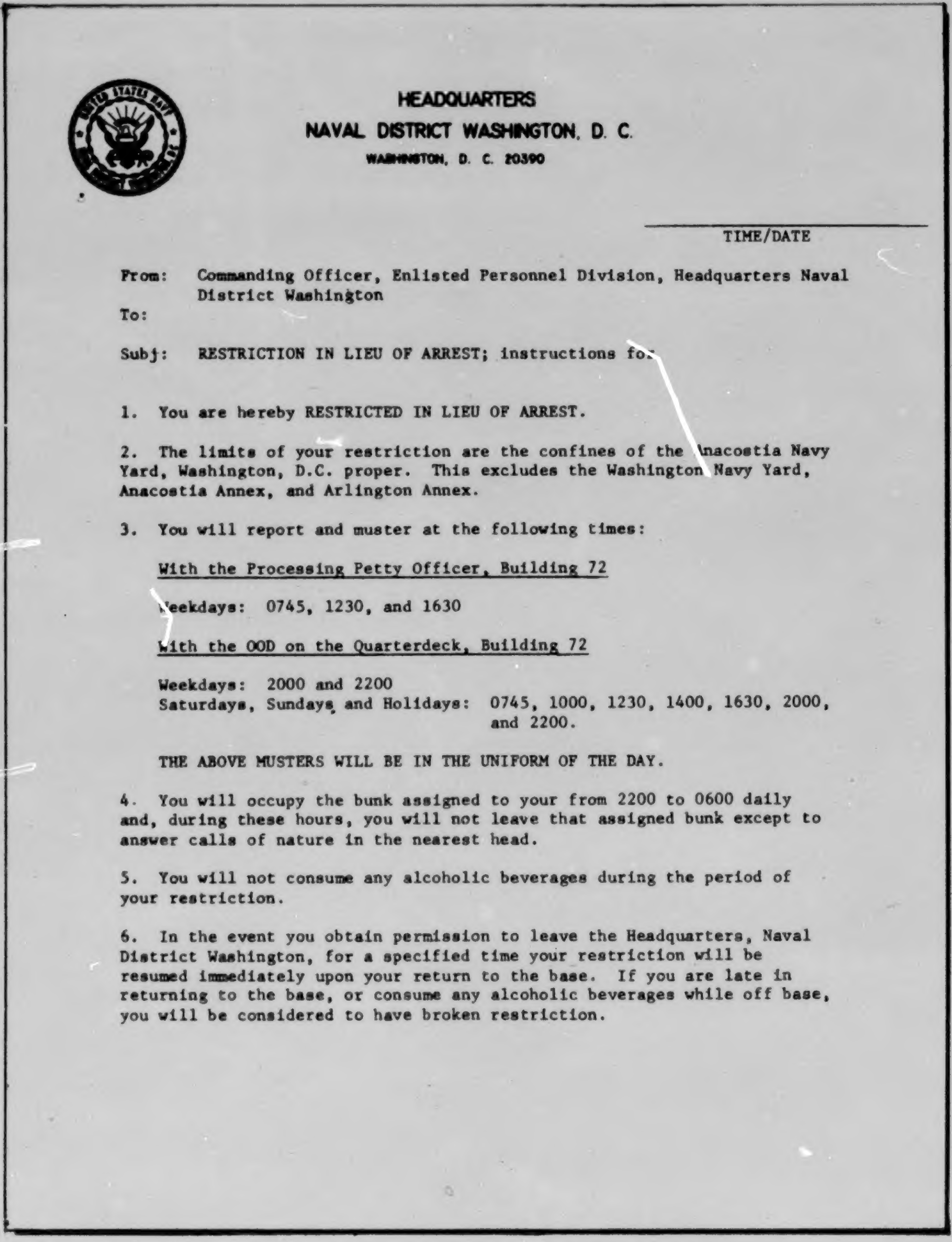
Immediately upon receipt of the charges or of information as to a suspected offense, the proper authority must determine the type of restraint, if restraint is considered necessary, that is to be imposed on the accused pending trial or other disposition of the case. Pretrial restraint usually consists of either restriction to certain specified limits or confinement.

### Restriction

Pretrial restriction may be imposed upon an accused requiring him to remain within a specified area at specified times either because his continued presence pending investigation may be necessary or because it may be considered a wise precaution to restrict him to such an area in order that he may not again be exposed to the temptation of misconduct similar to that for which he is already under charges. This type restriction is not punitive restriction. The limits of the restriction should be reasonable and should not be imposed for any longer period than is considered necessary. Figure 7-9 is a sample order.

### Confinement

Pretrial confinement is physical restraint of an accused prior to trial. Pretrial confinement must not be imposed pending trial unless considered necessary to ensure the presence of the accused at the trial, because of the seriousness of the offense charged or because of the presence of factors making it probable that failure to confine the member would endanger life or property. When a person is placed in confinement, immediate steps must be taken to inform him of the specific wrong of which he is accused and try him or to dismiss the charges and release him. See Article 10, *UCMJ*. As a general rule, a person should be informed of the accusations against him, advised of his right to consult with lawyer counsel and of the right to prepare for trial within 48 hours after he is placed in confinement. Pretrial confinement in excess of 30 days must be approved in writing in each instance by the officer exercising general court-martial jurisdiction over the command which



**HEADQUARTERS**
**NAVAL DISTRICT WASHINGTON, D. C.**
**WASHINGTON, D. C. 20390**

TIME/DATE

From: Commanding Officer, Enlisted Personnel Division, Headquarters Naval District Washington
To:

Subj: RESTRICTION IN LIEU OF ARREST; instructions for

1. You are hereby RESTRICTED IN LIEU OF ARREST.

2. The limits of your restriction are the confines of the Anacostia Navy Yard, Washington, D.C. proper. This excludes the Washington Navy Yard, Anacostia Annex, and Arlington Annex.

3. You will report and muster at the following times:

With the Processing Petty Officer, Building 72

Weekdays: 0745, 1230, and 1630

With the OOD on the Quarterdeck, Building 72

Weekdays: 2000 and 2200
Saturdays, Sundays and Holidays: 0745, 1000, 1230, 1400, 1630, 2000, and 2200.

THE ABOVE MUSTERS WILL BE IN THE UNIFORM OF THE DAY.

4. You will occupy the bunk assigned to your from 2200 to 0600 daily and, during these hours, you will not leave that assigned bunk except to answer calls of nature in the nearest head.

5. You will not consume any alcoholic beverages during the period of your restriction.

6. In the event you obtain permission to leave the Headquarters, Naval District Washington, for a specified time your restriction will be resumed immediately upon your return to the base. If you are late in returning to the base, or consume any alcoholic beverages while off base, you will be considered to have broken restriction.

192.76.1

Figure 7-9.—Restriction in Lieu of Arrest Orders.

7. You are advised that "breaking restriction" is a violation of Article 134, UCMJ, for which the maximum punishment is confinement at hard labor for one month and forfeiture of two-thirds pay for one month.

8. Read and comply with barracks regulation, NAVSTAINST 11101.13 series, located in the MAA office, Bldg 72, Third Deck. You are ordered to read and comply with this instruction.

9. You are forbidden to enter or use the facilities of any Enlisted Club without the express authorization of the ACDO or, in his absence, the OOD.

10. You are reminded that smoking is permitted only in authorized smoking areas.

Discipline Officer
By direction

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

____________________
DATE/TIME

9

I have read and fully understand the above orders and hereby acknowledge receipt of one (1) signed copy of these orders.

____________________
WITNESS

____________________
SIGNATURE OF PERSON BEING RESTRICTED
IN LIEU OF ARREST

Distribution:
Original to Discipline Office
1 - OOD, Bldg 72
1 - Processing Division Officer
1 - to Man under RLA
1 - Discipline Officer

192.76.2

Figure 7-9.—Restriction in Lieu of Arrest Orders—(Continued).

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ordered the investigation of the alleged offense. Confinement not imposed as punishment must be strictly limited to cases fully justifiable where no alternative is practicable. The absentee who surrenders, or even though apprehended indicates that he will not absent himself again, senior enlisted personnel facing charges after previously unblemished records, and obviously stable individuals facing minor charges should not be confined. Ordinarily, an individual who is to be tried by summary court-martial should not be placed in pretrial confinement. Figure 7-10 is a sample confinement order.

## PRETRIAL AGREEMENTS

What is a pretrial agreement? As the name itself indicates, a pretrial agreement is an agreement made before trial between the accused and the convening authority. The agreement stipulates the maximum sentence which the CA will approve in return for a guilty plea of the accused. Actually, it's not quite that simple, as the following discussion will bear out.

### PURPOSE

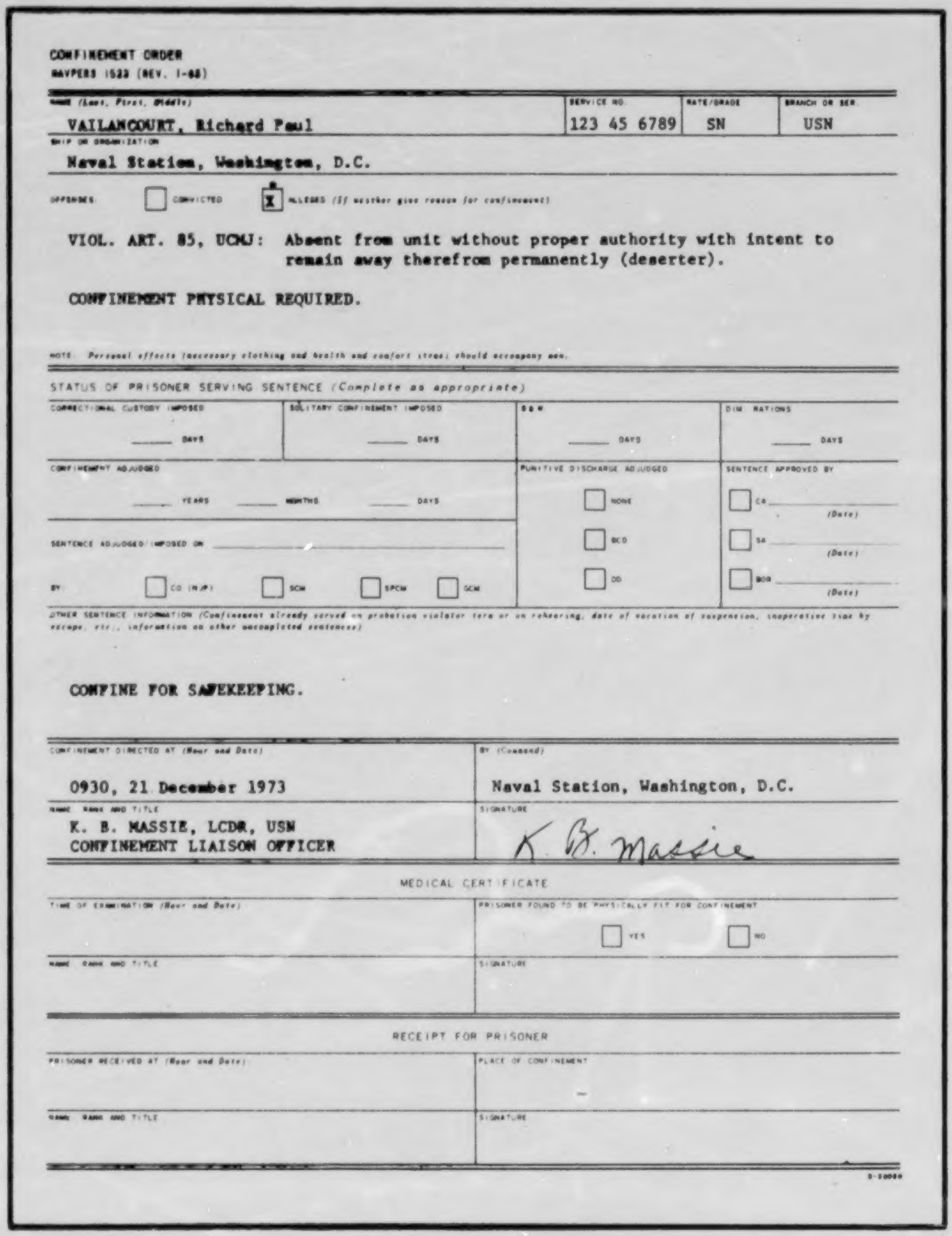
Pretrial agreements are advantageous to both the Government and the accused. By entering into an agreement with the CA, the accused knows in advance the maximum sentence which the CA will approve. On the other hand, through advanced planning, the Government is able to effect savings in money and manpower while also effecting the expeditious administration of justice. Thus, from the Government's viewpoint, savings is the primary purpose of entering into pretrial agreements with accused persons. From the accused person's point of view, provided he is in fact guilty and desires to plead guilty, he has the advantage of knowing beforehand what his maximum sentence will be.

### EXECUTION OF AGREEMENTS

Pretrial agreements may be entered into in both GCM's and SPCM's. There is no provision for entering into a pretrial agreement in summary courts-martial. The offer to plead guilty must originate with the accused and his counsel. The offer should be submitted to the assigned trial counsel who conducts all arrangements as to the offer and makes recommendations concerning the offer to the CA. In GCM's the TC works through the SJA in making his recommendations concerning the offer to the CA. However, in SPCM's, this procedure is not required if the CA has no SJA. If a punitive discharge is contemplated by the terms of the agreement, lawyer counsel within the meaning of Article 27(b), *UCMJ*, must be made available to the accused to advise him, unless the accused specifically waives his right to such counsel.

The agreement, itself, must be in writing and must be personally signed by the convening authority and the accused and witnessed on behalf of the accused by his counsel. A suggested form of such an agreement for GCM's is shown in figure 7-11. See also Appendix A-1-e and A-1-f of the *JAG Manual* for examples of pretrial agreements. The format of the agreement must be modified as necessary to include all of the terms of the agreement made between the accused and the CA. No matters "understood" between the accused and the CA should be omitted from the written agreement. The offer of the accused to plead guilty must not be accepted if the Government has reason to believe that the evidence which it will be able to produce at trial would be insufficient to convict the accused.

Except for the military judge, under no circumstance may the court be officially informed of any negotiation between the CA and the accused on the subject of a pretrial agreement, or of any such agreement existing at the time of trial, or of any such agreement made and later rejected by the accused who has decided to plead not guilty. Caution should also be exercised to prevent the court from obtaining unofficial knowledge of the negotiation for, or existence of, a pretrial agreement. However, the military judge is authorized to examine the pretrial agreement in those cases in which he sits with members of the court. He is not authorized to examine or inquire into that part of the agreement which sets forth the specific sentence agreed upon by the accused and the CA in those cases he hears alone (without members). The existence of a pretrial agreement does not preclude the accused from presenting matter in



CONFINEMENT ORDER
NAVPERS 1523 (REV. 1-68)

| | | | |
|---|---|---|---|
| NAME (Last, First, Middle)<br>VAILANCOURT, Richard Paul | SERVICE NO.<br>123 45 6789 | RATE/GRADE<br>SN | BRANCH OR SER.<br>USN |

SHIP OR ORGANIZATION
Naval Station, Washington, D.C.

OFFENSES ☐ CONVICTED ☒ ALLEGED (If neither give reason for confinement)

VIOL. ART. 85, UCMJ: Absent from unit without proper authority with intent to remain away therefrom permanently (deserter).

CONFINEMENT PHYSICAL REQUIRED.

NOTE: *Personal effects (necessary clothing and health and comfort items) should accompany man.*

STATUS OF PRISONER SERVING SENTENCE *(Complete as appropriate)*

| | | | |
|---|---|---|---|
| CORRECTIONAL CUSTODY IMPOSED<br>_____ DAYS | SOLITARY CONFINEMENT IMPOSED<br>_____ DAYS | B & W<br>_____ DAYS | DIM. RATIONS<br>_____ DAYS |
| CONFINEMENT ADJUDGED<br>_____ YEARS _____ MONTHS _____ DAYS | | PUNITIVE DISCHARGE ADJUDGED<br>☐ NONE<br>☐ BCD<br>☐ DD | SENTENCE APPROVED BY<br>☐ CA _____ *(Date)*<br>☐ SA _____ *(Date)*<br>☐ BOR _____ *(Date)* |
| SENTENCE ADJUDGED/IMPOSED ON _____<br>BY: ☐ CO (NJP) ☐ SCM ☐ SPCM ☐ GCM | | | |

OTHER SENTENCE INFORMATION *(Confinement already served on probation violator term or on rehearing, date of vacation of suspension, inoperative time by escape, etc., information on other uncompleted sentences)*

CONFINE FOR SAFEKEEPING.

| | |
|---|---|
| CONFINEMENT DIRECTED AT *(Hour and Date)*<br>0930, 21 December 1973 | BY *(Command)*<br>Naval Station, Washington, D.C. |
| NAME, RANK AND TITLE<br>K. B. MASSIE, LCDR, USN<br>CONFINEMENT LIAISON OFFICER | SIGNATURE<br>K. B. Massie |

MEDICAL CERTIFICATE

| | |
|---|---|
| TIME OF EXAMINATION *(Hour and Date)* | PRISONER FOUND TO BE PHYSICALLY FIT FOR CONFINEMENT<br>☐ YES ☐ NO |
| NAME, RANK AND TITLE | SIGNATURE |

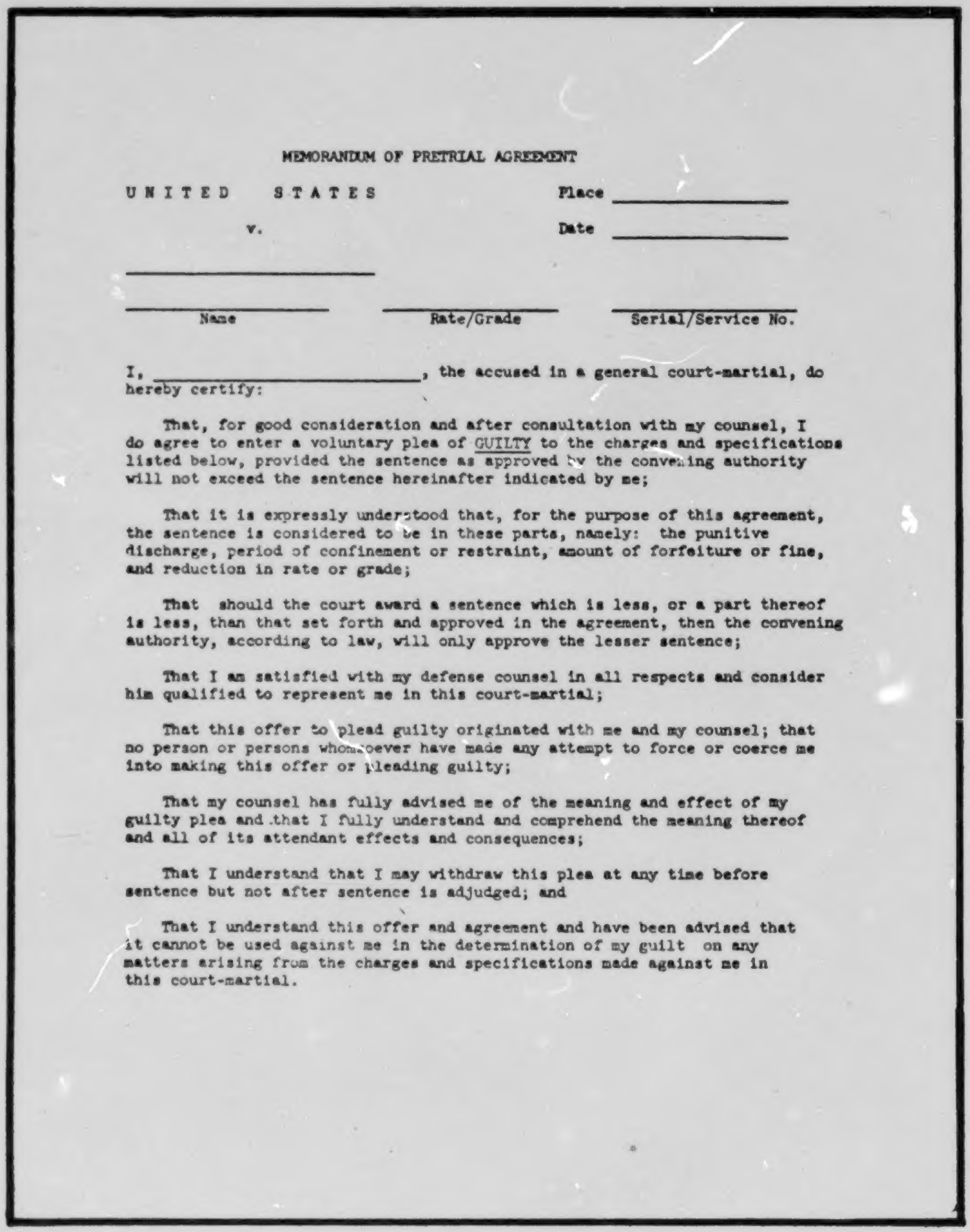
RECEIPT FOR PRISONER

| | |
|---|---|
| PRISONER RECEIVED AT *(Hour and Date)* | PLACE OF CONFINEMENT |
| NAME, RANK AND TITLE | SIGNATURE |

S-00080

192.38

**Figure 7-10.—Confinement Order** (Confine for Safekeeping).



MEMORANDUM OF PRETRIAL AGREEMENT

UNITED STATES                Place ________________

v.                Date ________________

______________________

____________________ ____________________ ____________________
Name                Rate/Grade                Serial/Service No.

I, ______________________, the accused in a general court-martial, do hereby certify:

That, for good consideration and after consultation with my counsel, I do agree to enter a voluntary plea of GUILTY to the charges and specifications listed below, provided the sentence as approved by the convening authority will not exceed the sentence hereinafter indicated by me;

That it is expressly understood that, for the purpose of this agreement, the sentence is considered to be in these parts, namely: the punitive discharge, period of confinement or restraint, amount of forfeiture or fine, and reduction in rate or grade;

That should the court award a sentence which is less, or a part thereof is less, than that set forth and approved in the agreement, then the convening authority, according to law, will only approve the lesser sentence;

That I am satisfied with my defense counsel in all respects and consider him qualified to represent me in this court-martial;

That this offer to plead guilty originated with me and my counsel; that no person or persons whomsoever have made any attempt to force or coerce me into making this offer or pleading guilty;

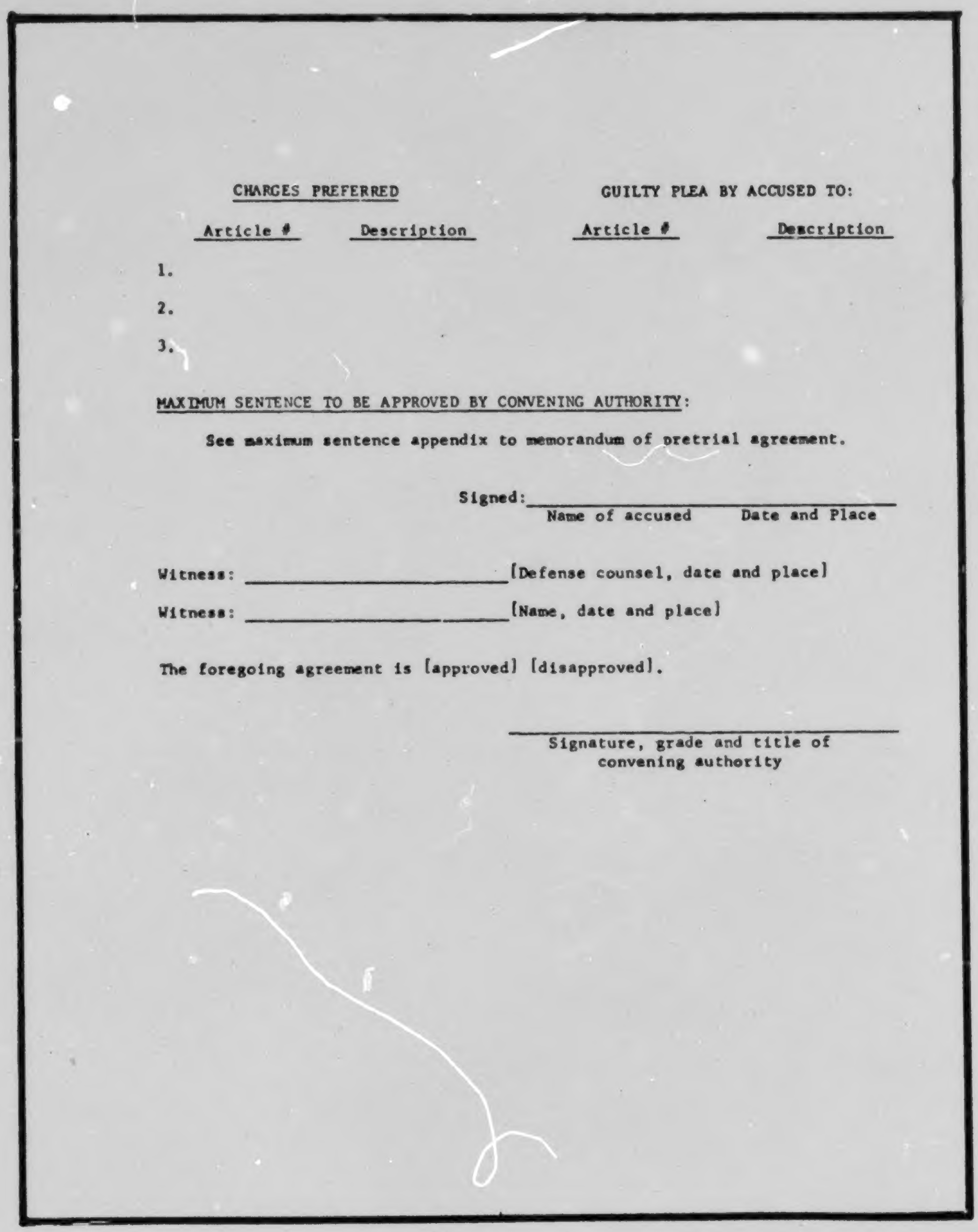
That my counsel has fully advised me of the meaning and effect of my guilty plea and that I fully understand and comprehend the meaning thereof and all of its attendant effects and consequences;

That I understand that I may withdraw this plea at any time before sentence but not after sentence is adjudged; and

That I understand this offer and agreement and have been advised that it cannot be used against me in the determination of my guilt on any matters arising from the charges and specifications made against me in this court-martial.

192.39.1

Figure 7-11.—Memorandum of Pretrial Agreement.



| CHARGES PREFERRED |  | GUILTY PLEA BY ACCUSED TO: |  |
|---|---|---|---|
| Article # | Description | Article # | Description |
| 1. |  |  |  |
| 2. |  |  |  |
| 3. |  |  |  |

MAXIMUM SENTENCE TO BE APPROVED BY CONVENING AUTHORITY:

See maximum sentence appendix to memorandum of pretrial agreement.

Signed: ______________________________
Name of accused    Date and Place

Witness: ______________________ [Defense counsel, date and place]

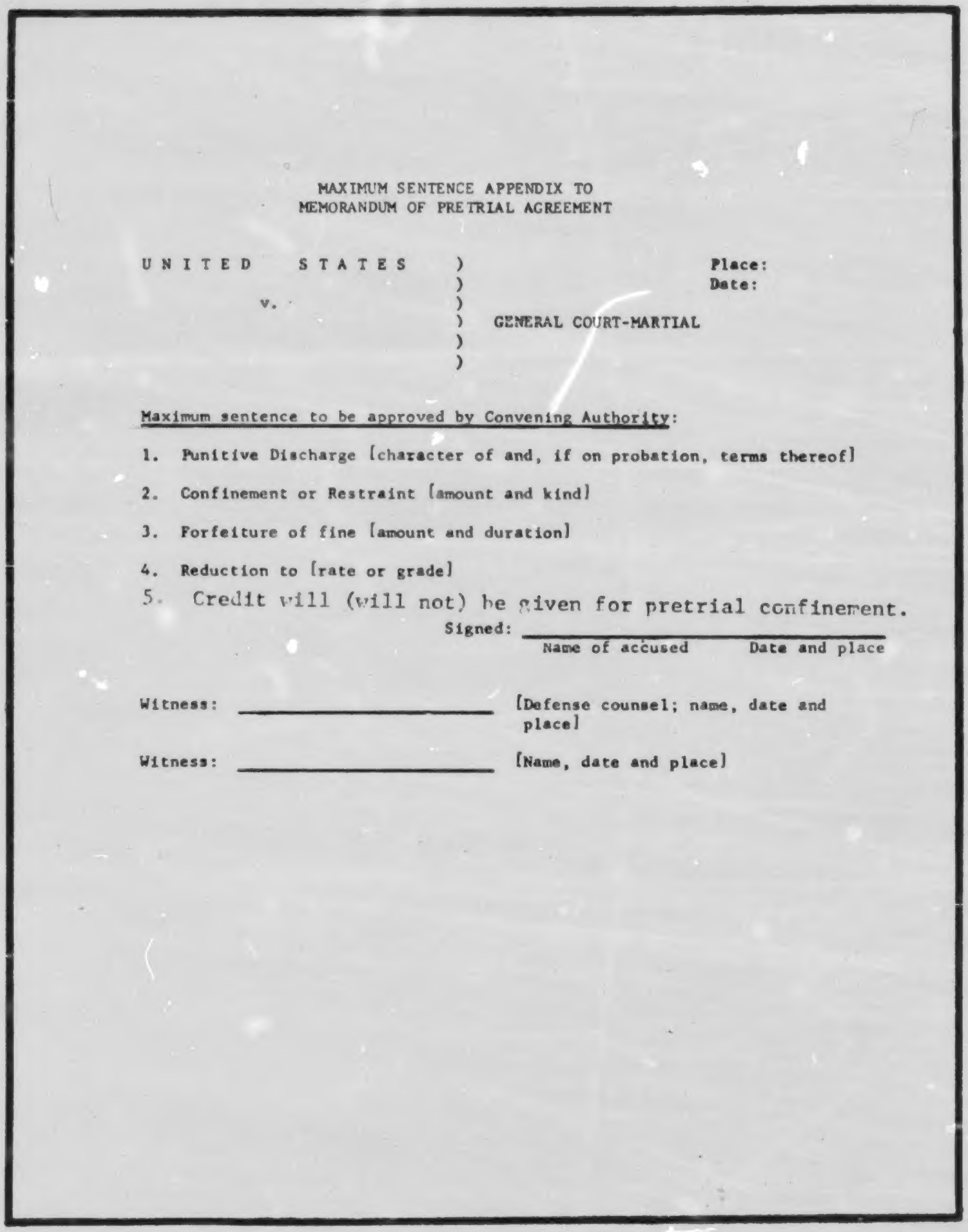
Witness: ______________________ [Name, date and place]

The foregoing agreement is [approved] [disapproved].

______________________________
Signature, grade and title of
convening authority

192.39.2

Figure 7-11.—Memorandum of Pretrial Agreement—(Continued).



MAXIMUM SENTENCE APPENDIX TO
MEMORANDUM OF PRETRIAL AGREEMENT

UNITED STATES )　　Place:
)　　Date:
v. )
) GENERAL COURT-MARTIAL
)
)

Maximum sentence to be approved by Convening Authority:

1. Punitive Discharge [character of and, if on probation, terms thereof]

2. Confinement or Restraint [amount and kind]

3. Forfeiture of fine [amount and duration]

4. Reduction to [rate or grade]

5. Credit will (will not) be given for pretrial confinement.

Signed: ______________________
Name of accused　　Date and place

Witness: ______________________ [Defense counsel; name, date and place]

Witness: ______________________ [Name, date and place]

192.39.3

Figure 7-11.—Memorandum of Pretrial Agreement—(Continued).

mitigation and extenuation. Counsel for the accused also has a continuing duty, notwithstanding a pretrial agreement, to vigorously represent the accused before the court with respect to the sentence to be adjudged.

Actually, the accused benefits in two ways by entering into a pretrial agreement. First, if the court adjudges a greater sentence than provided for in the pretrial agreement, the CA must reduce the sentence according to the terms of the agreement. However, if the court adjudges a lesser sentence than provided for in the pretrial agreement, the CA may not increase the sentence as provided for in the agreement and the accused must only serve the lesser sentence as adjudged by the court. Further information concerning pretrial agreements is contained in the *JAG Manual*.

## GRANTS OF IMMUNITY TO WITNESSES

In certain cases involving more than one participant, the interests of justice may be better served if immunity from prosecution is granted to one (or more) of the participants in the offense in consideration for his giving testimony for the Government at the trial of the principal offender. The authority to grant immunity from prosecution to a witness may only be exercised by officers exercising general court-martial jurisdiction. This authority may be exercised in any case regardless of whether formal charges have been preferred or whether or not the matter has been referred for trial.

## PROCEDURE

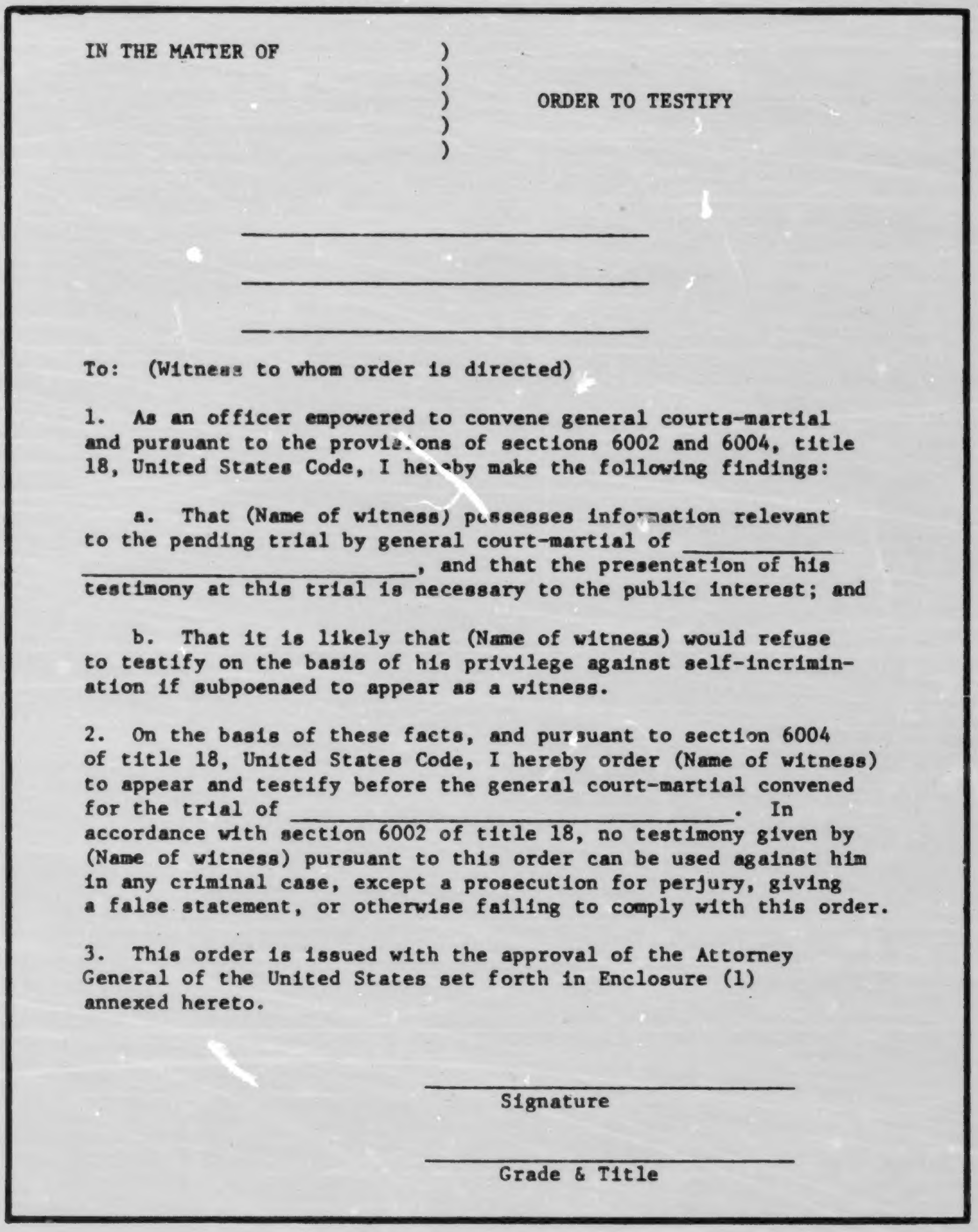
A written recommendation that a certain witness be granted immunity from prosecution in consideration for testimony considered essential to the Government must be forwarded to the officer exercising general court-martial jurisdiction. If the case has been referred for trial, the trial counsel forwards the recommendation. If the case has not been referred for trial, then the pretrial investigating officer; the counsel or recorder of any other fact-finding body; or the investigator, when no charges have been preferred; forwards the recommendation. The recommendation must state in detail why the testimony of the witness is so essential that the interests of justice cannot be served without the grant of immunity. Prior to taking action on the recommendation, the officer exercising GCM jurisdiction refers it to his SJA for consideration and advice.

### Civilian Witnesses

When the testimony of a civilian witness is considered necessary at a court-martial, and if the witness has refused or is likely to refuse to testify on the basis of his privilege against self-incrimination, approval of the Attorney General of the United States must be obtained before the officer exercising GCM jurisdiction may issue an order to the witness to testify. See figure 7-12 for the format to be used in this order.

In such a case, a letter should be sent to the JAG requesting assistance in obtaining the approval of the Attorney General. This letter should be forwarded in sufficient time to allow three weeks for consideration and processing and must contain the following information:

1. Name, citation, or other identifying information of the proceeding in which the order is to be used.
2. Name of the individual for whom the immunity is requested.
3. Name of the employer or company with which he is associated.
4. Date and place of birth, if known, of the witness.
5. FBI number or local police number, if any, and if known.
6. Whether any State or Federal charges are pending against the prospective witness and the nature of the charges.
7. Whether the witness is currently incarcerated, under what conditions, and for what length of time.
8. A brief resume of the background of the investigation or proceeding.
9. A concise statement of the reasons for the request, including:
    a. What testimony the prospective witness is expected to give;
    b. How this testimony will serve the public interest;
    c. Whether the witness has invoked the



IN THE MATTER OF )
)
) ORDER TO TESTIFY
)
)

______________________________

______________________________

______________________________

To: (Witness to whom order is directed)

1. As an officer empowered to convene general courts-martial and pursuant to the provisions of sections 6002 and 6004, title 18, United States Code, I hereby make the following findings:

a. That (Name of witness) possesses information relevant to the pending trial by general court-martial of ____________ ____________________________, and that the presentation of his testimony at this trial is necessary to the public interest; and

b. That it is likely that (Name of witness) would refuse to testify on the basis of his privilege against self-incrimination if subpoenaed to appear as a witness.

2. On the basis of these facts, and pursuant to section 6004 of title 18, United States Code, I hereby order (Name of witness) to appear and testify before the general court-martial convened for the trial of ____________________________________. In accordance with section 6002 of title 18, no testimony given by (Name of witness) pursuant to this order can be used against him in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order.

3. This order is issued with the approval of the Attorney General of the United States set forth in Enclosure (1) annexed hereto.

______________________________
Signature

______________________________
Grade & Title

192.40

Figure 7-12.—Order to Testify.

   privilege against self-incrimination, or is likely to invoke the privilege;

   d. If the witness is likely to invoke the privilege against self-incrimination, why is it anticipated that he will do so.

10. An estimate as to whether the witness is likely to testify in the event immunity is granted.

After a civilian witness has testified, the following information should be provided to the United States Department of Justice, Criminal Division, Immunity Unit, Washington, D.C. 20530:

1. Name, citation, or other identifying information of the proceeding in which the order was requested.
2. Date of the examination of the witness.
3. Name and residence address of the witness.
4. Whether the witness invoked the privilege against self-incrimination.
5. Whether the immunity order was used.
6. Whether the witness testified pursuant to the order.
7. If the witness refused to comply with the order, whether contempt proceedings were instituted, or are contemplated, and the result of the contempt proceeding, if concluded.

A copy of this correspondence along with a verbatim transcript of the witness' testimony, properly authenticated by the military judge, should be forwarded to the JAG at the conclusion of the trial. No testimony given by a civilian witness pursuant to an order to testify can be used against him in any criminal case, except for a prosecution for perjury, giving a false statement, or failing to comply with the order in some other manner.

## FORM OF GRANT

The officer exercising GCM jurisdiction should ensure that a written agreement is executed in any case in which a witness is granted immunity. See figure 7-13 for the recommended format to be used.

## PRESERVATION OF EVIDENCE

*Black* defines evidence as "Any species of proof, or probative matter, legally presented at the trial of an issue by the act of the parties and through the medium of witnesses, records, documents, concrete objects, etc., for the purpose of inducing belief in the minds of the court or jury as to their contention." Said another way, evidence is anything which tends to prove or disprove any matter in question, or to influence the belief respecting it.

Chapter XXVII of the *MCM* sets forth the "Rules of Evidence" to be used before courts-martial. As a Legalman, you will not be particularly concerned with the rules of evidence. Such matters are best left to the lawyers. However, you will be concerned with preserving evidence for use at trial.

## CONSTITUTIONAL REQUIREMENTS

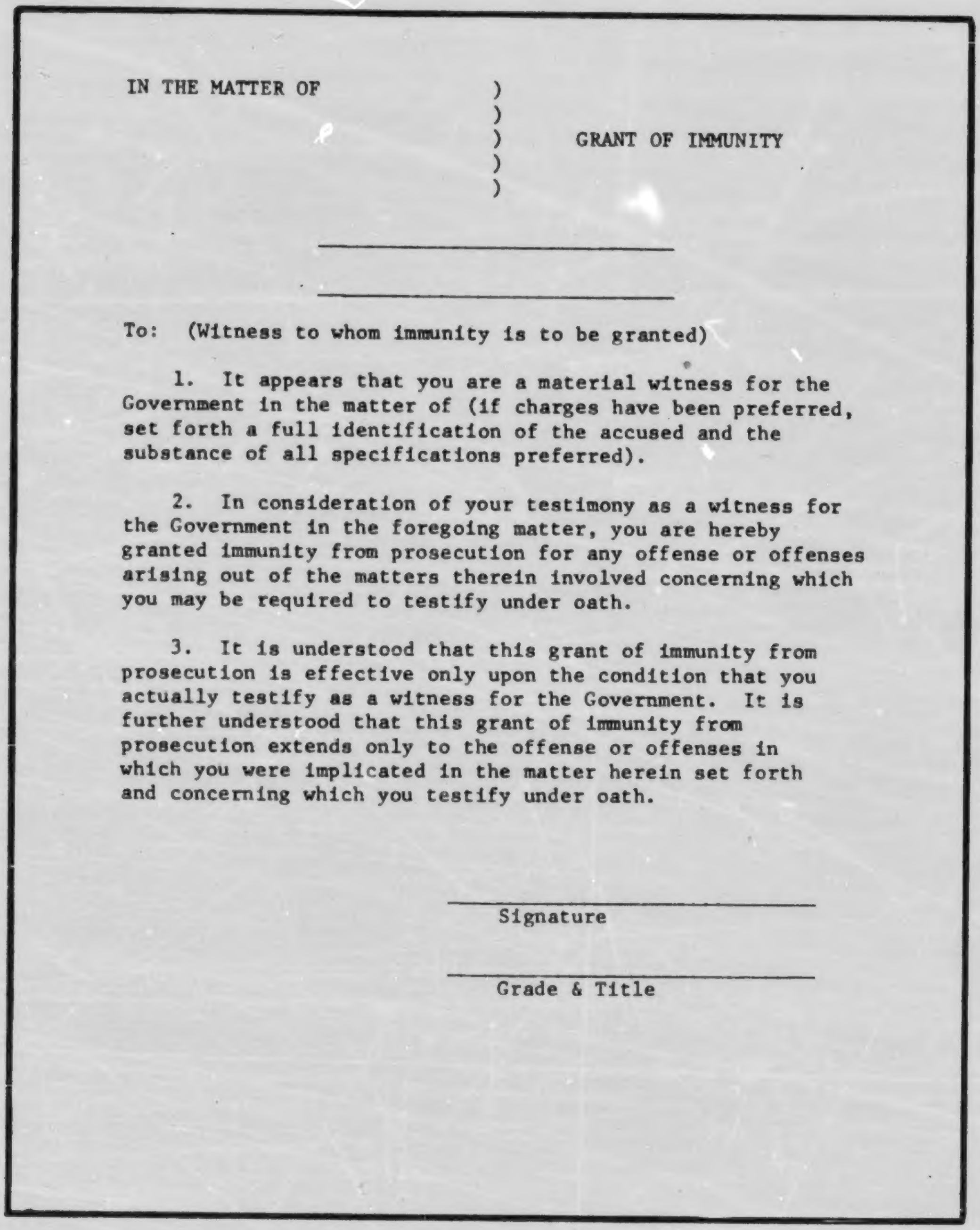
You have already covered the requirements for taking statements and conducting searches and seizures in Chapter 5. Perhaps a review of Chapter 5 would be helpful at this point.

Unless the suspect or accused is afforded all the rights to which he is legally entitled, any evidence obtained from him, whether it be a statement or seized articles, may be contested in court and found inadmissible as evidence. Thus, it is of paramount importance that all legal rights be afforded the suspect or accused so that any evidence obtained may be used.

## PHYSICAL HANDLING OF EVIDENCE

In order to admit lawfully seized items in evidence at trial they must be authenticated. That is, it must be shown that they are what they purport to be. Sheer administrative convenience dictates that all evidence seized be tagged to indicate:

- Date and time of seizure.
- Location of article when discovered.
- Identification of person, if any, from whom the property was taken.
- Name of person seizing the evidence.



IN THE MATTER OF )
)
) GRANT OF IMMUNITY
)
)

________________________________

________________________________

To: (Witness to whom immunity is to be granted)

1. It appears that you are a material witness for the Government in the matter of (if charges have been preferred, set forth a full identification of the accused and the substance of all specifications preferred).

2. In consideration of your testimony as a witness for the Government in the foregoing matter, you are hereby granted immunity from prosecution for any offense or offenses arising out of the matters therein involved concerning which you may be required to testify under oath.

3. It is understood that this grant of immunity from prosecution is effective only upon the condition that you actually testify as a witness for the Government. It is further understood that this grant of immunity from prosecution extends only to the offense or offenses in which you were implicated in the matter herein set forth and concerning which you testify under oath.

________________________________
Signature

________________________________
Grade & Title

192.41

Figure 7-13.--Grant of Immunity.

- Name of suspect(s) against whom the evidence may be used.

The problem in getting evidence admitted, then, is one of demonstrating to the court that the evidence offered is precisely the same evidence as was seized. Dependent upon the characteristics of the evidence, in-court identification may be made by either of two means, and how you handle the evidence will depend upon which method of in-court identification is contemplated.

If the evidence has a peculiar identifying feature, one familiar with that feature may identify the evidence by that feature in court. The use of a serial number to identify a typewriter is an example of this method of identification. As you can see, your sole concern with such evidence is to guarantee its presence in court, which is done by providing physical security until trial, typically in the legal officer's safe.

Evidence which does not have such an identifying feature must be treated with greater care. Suspected marijuana cigarettes are examples of this kind of evidence. In order to demonstrate that the proffered evidence is the same as that seized, the trial counsel will have to establish a chain of custody from the time of seizure until the time of trial. The trial counsel will prove his evidence by calling a succession of witnesses commencing with the person who made the seizure and ending with the person who delivers the evidence to the court. Each witness will testify how he got the evidence, what, if anything, he did with it, and to whom he delivered it. The necessity of limiting access to the evidence and of keeping a record of those who have had control over the evidence is apparent. The recommended method of keeping such a record is to prepare signature cards and to require the signature of each person who has control of the evidence. This scheme is complicated when evidence must be sent to a laboratory for analysis, as in the marijuana example. It is, however, thought to be sufficient to show chain of custody from seizure until mailing, to mail the evidence to the laboratory by registered mail with a return receipt requested, and to reestablish chain of custody when the evidence is received via registered mail from the laboratory.

## Chapter 8

# TRIAL PROCEDURES

Trial procedures differ according to the type of court convened to hear the case. SCM's are convened to try relatively minor offenses and use a simple form of procedure. SPCM's try serious offenses which are deemed to be beyond the scope of an SCM but not serious enough to warrant trial by GCM. The most serious offenses are reserved for trial by GCM. The major differences in these types of courts-martial are the maximum punishments which each may adjudge and the manner in which the records of proceedings are prepared.

This chapter examines your duties in preparation for and during the trial, the types of courts-martial, the procedures each utilize, and other procedural matters which occur just prior to and during trial. Preliminary matters such as preparing the charge sheet, pretrial agreements, and grants of immunity are covered in Chapter 7.

### ADMINISTRATIVE DUTIES OF THE LEGALMAN

There are several things you must accomplish or ensure have been accomplished just prior to trial. Such things as arranging for a suitable place to hold the trial, arranging for the attendance of military and civilian witnesses, and many other administrative functions are among your trial duties.

#### DUTIES PRIOR TO TRIAL

When directed by the TC, you must arrange for a place to hold the trial. In law centers you will already have a courtroom set up and all you will need to do is schedule it for the trial. However, aboard ship or at small shore commands where no such facilities exist, you may have to locate and set up a room in which to hold the trial. In selecting the place to hold the trial, keep in mind that it should be large enough to accommodate the court and a reasonable number of spectators. It should also be in an area which is relatively quiet so that you, as reporter, can easily hear and record testimony and so that the court will not be unduly disturbed.

After the date for the trial has been set and the place it is to be held is selected, the TC may request you to notify the court members of the time, date, and place of the trial. Notification should be made as early as possible to permit the members to make any necessary changes in their schedules. However, if notification is made more than a week or so before the trial, you should call the court members again a day or two before the trial as a reminder. Nothing is more disgruntling for all concerned than to be all set to proceed with the trial but unable to do so because some of the members either were not notified or had forgotten about the trial.

Another of your duties just prior to trial is to ensure that a supply of pencils, paper, and forms required, such as findings and sentence worksheets and reports of results of trial, and so forth, are on hand and available for the court's use. It goes without saying that you will have your recording equipment set up and ready to go on the day of the trial.

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## MISCELLANEOUS MATTERS

Other matters in which you may be involved prior to trial include preparation of subpoenas for civilian witnesses and coordination with other commands in obtaining needed military witnesses. You should be familiar with the pertinent sections of the *JAG Manual* pertaining to payment of fees of civilian witnesses. You will also be expected to arrange for messing and berthing for military witnesses from out of the area. Now let's take a look at some of the procedures involved in obtaining needed witnesses.

### Military Witnesses

If a needed military witness is stationed within the command, normally, the TC merely notifies the witness that he must attend the trial. If the witness is stationed nearby where no travel expense to the Government would be involved, but in a command other than the command convening the court, the CA should request the witness' CO to order the witness to attend the trial. In those cases where the needed witness is stationed so far away that travel at Government expense will be involved, the CA should request the witness' CO to issue TAD orders directing the witness to attend the trial. The expenses incurred when such orders are issued are normally charged to the CA's TAD funds. The usual procedure is to furnish the accounting data of the CA's command in the request to the witness' CO that TAD orders be issued. You will need to coordinate these details with your personnel or administrative office.

It is a violation of Article 92, *UCMJ*, for a military witness to refuse to appear at trial after having received a lawful order to do so.

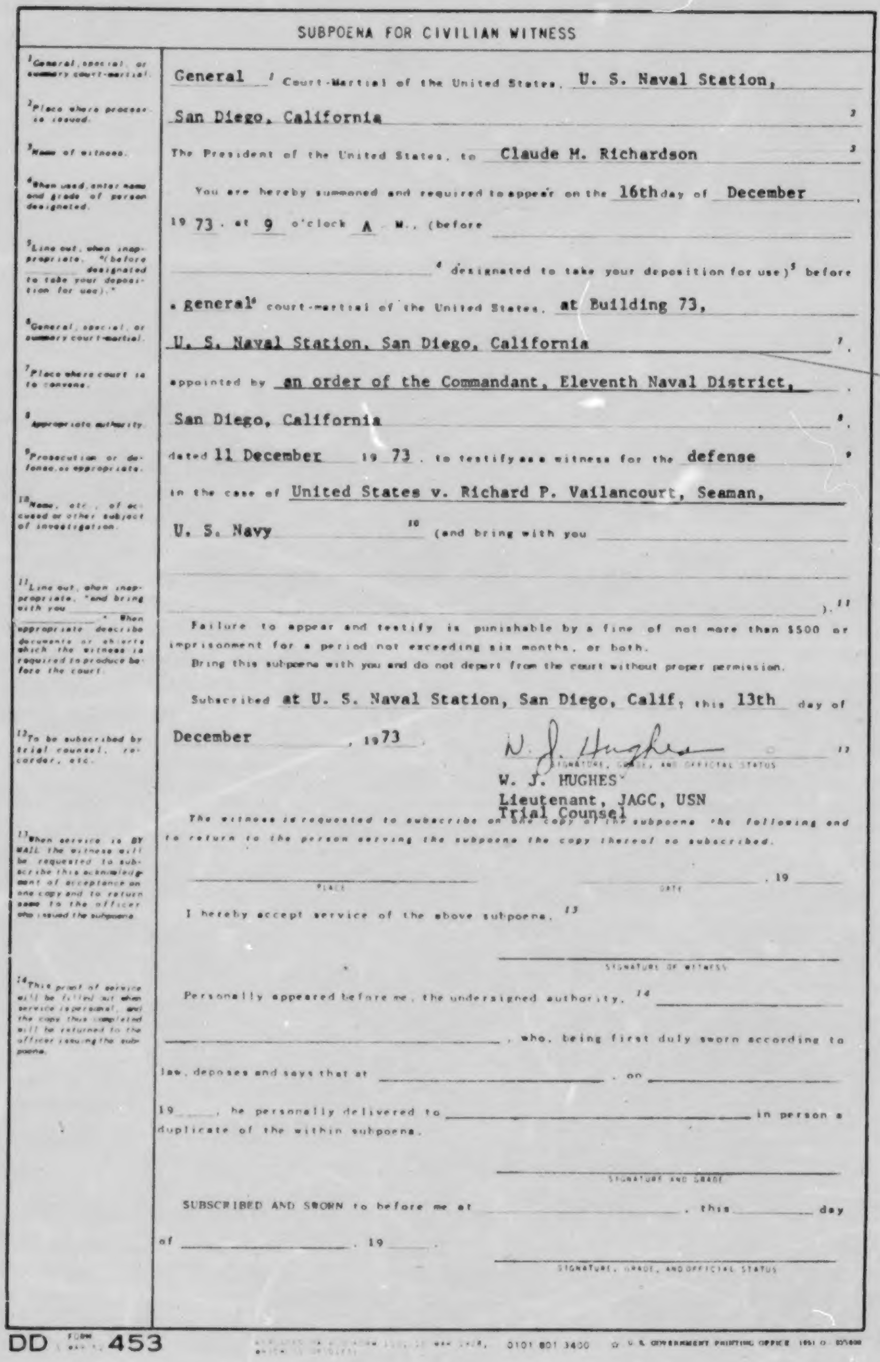
### Civilian Witnesses

A civilian witness, like a military witness, can be given an order to attend a court-martial. This order is called a "subpoena." Technically, this subpoena is from the President of the United States to the witness. The TC of a court-martial is authorized to issue a subpoena, in the President's name, to any civilian who is a material witness and is within any part of the United States, its territories, or possessions. The subpoena is prepared in duplicate on DD Form 453 (1 Mar 51). Figure 8-1 is an example of a properly prepared subpoena. Instructions for completion of the form are contained on the form itself.

The delivery or "service" of a subpoena can be accomplished in several ways. If the civilian is cooperative and the subpoena is served merely to permit the witness to be paid a witness fee and mileage, the subpoena may be served informally, i.e., by mail. This is accomplished by mailing the original and one copy of the subpoena to the witness with a letter explaining that his right to witness fees and mileage will not be affected by his accepting service via mail. You should enclose a postage-paid return-addressed envelope, addressed to the TC, for the witness' convenience in returning the signed copy of the subpoena. After the witness signs the acceptance of service statement on the copy of the subpoena, he returns it to the TC in the envelope furnished.

If there is reason to believe that a civilian witness may be uncooperative and the TC desires that he be prosecuted if he refuses to appear, formal (personal) service of the subpoena is required. Formal service is accomplished when the witness is personally served (handed) the original subpoena. Service is usually made by persons subject to the *UCMJ*, but may be made by others. If the civilian is located near where the court is to sit, the TC himself, or another subordinate of the CA, will usually serve the subpoena. If the civilian is not located near where the court will sit, the TC must request a military commander or civil authority near the witness to have him personally served. The TC must also have the civilian personally paid or tendered one day's witness fee and round trip mileage. See section 0138 of the *JAG Manual*. The person who actually serves the subpoena on the witness should sign and swear to the "proof of service" at the bottom of the copy of the subpoena and return it to the TC.

A civilian who has been formally served with a subpoena and paid or tendered fees and mileage and refuses to appear at the trial violates Article 47(a), *UCMJ*, and can be tried for this offense in a U.S. District Court.



SUBPOENA FOR CIVILIAN WITNESS

General [1] Court-Martial of the United States, U. S. Naval Station, San Diego, California [2]

The President of the United States, to Claude M. Richardson [3]

You are hereby summoned and required to appear on the 16th day of December, 19 73, at 9 o'clock A. M., (before ______ [4] designated to take your deposition for use)[5] before a general[6] court-martial of the United States, at Building 73, U. S. Naval Station, San Diego, California [7], appointed by an order of the Commandant, Eleventh Naval District, San Diego, California [8], dated 11 December 19 73, to testify as a witness for the defense [9] in the case of United States v. Richard P. Vailancourt, Seaman, U. S. Navy [10] (and bring with you ______ ).[11]

Failure to appear and testify is punishable by a fine of not more than $500 or imprisonment for a period not exceeding six months, or both.

Bring this subpoena with you and do not depart from the court without proper permission.

Subscribed at U. S. Naval Station, San Diego, Calif, this 13th day of December, 1973.

W. J. Hughes [12]
SIGNATURE, GRADE, AND OFFICIAL STATUS
W. J. HUGHES
Lieutenant, JAGC, USN
Trial Counsel

*The witness is requested to subscribe on the copy of the subpoena the following and to return to the person serving the subpoena the copy thereof so subscribed.*

______ PLACE ______ DATE, 19 ______

I hereby accept service of the above subpoena.[13]

______
SIGNATURE OF WITNESS

Personally appeared before me, the undersigned authority,[14] ______, who, being first duly sworn according to law, deposes and says that at ______, on ______ 19 ___, he personally delivered to ______ in person a duplicate of the within subpoena.

______
SIGNATURE AND GRADE

SUBSCRIBED AND SWORN to before me at ______, this ______ day of ______, 19 ___.

______
SIGNATURE, GRADE, AND OFFICIAL STATUS

[1] *General, special, or summary court-martial.*

[2] *Place where process is issued.*

[3] *Name of witness.*

[4] *When used, enter name and grade of person designated.*

[5] *Line out, when inappropriate, "(before ______ designated to take your deposition for use)."*

[6] *General, special, or summary court-martial.*

[7] *Place where court is to convene.*

[8] *Appropriate authority.*

[9] *Prosecution or defense, as appropriate.*

[10] *Name, etc., of accused or other subject of investigation.*

[11] *Line out, when inappropriate, "and bring with you ______." When appropriate describe documents or objects which the witness is required to produce before the court.*

[12] *To be subscribed by trial counsel, recorder, etc.*

[13] *When service is BY MAIL the witness will be requested to subscribe this acknowledgment of acceptance on one copy and to return same to the officer who issued the subpoena.*

[14] *This proof of service will be filled out when service is personal, and the copy thus completed will be returned to the officer issuing the subpoena.*

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Figure 8-1.—Subpoena for Civilian Witness.

In processing payments to civilian witnesses, you will have to maintain close coordination with the disbursing office. While it is the responsibility of disbursing personnel to compute and pay travel money to witnesses as prescribed by *Joint Travel Regulations* (JTR) and *Navy Travel Instructions* (NTI), the witness will look to you, as Legalman, to ensure that he is properly paid. You will be called upon to assist the witness in filling out his claim for travel pay and fees, and you will be expected to have assembled all the necessary paperwork before sending the witness to disbursing for payment. Consequently, you should have a general understanding of the entitlements spelled out by *JTR*, para. C-3054 and the procedures delineated by *NTI*, para. 6200. As in all areas involving payments by the disbursing officer, the scope of his action is narrowly defined by official publications. Therefore, if it becomes apparent that you will have a witness to be paid, it behooves you to make advance contact with disbursing and administrative personnel in order to ensure that smooth payment may be made when the witness presents his claim.

### Messing And Berthing

You should make advance arrangements for witnesses needing messing and berthing. Military witnesses are normally berthed in the Bachelor Enlisted Quarters (BEQ) or Bachelor Officers' Quarters (BOQ), as appropriate. Civilian witnesses may be berthed in the BOQ or in civilian facilities at their own expense, if available. If practicable, you should contact any civilian witnesses in advance to determine their desires as far as messing and berthing are concerned.

## COURT-MARTIAL TRIALS

The procedures utilized in court-martial trials depend upon the type of court convened and whether a military judge is detailed to the court. In our discussion of trial procedures, it will be necessary to treat the SCM separately because its procedures are much different from those of the SPCM and GCM. Now let's take a look at GCM's and SPCM's.

### COMPOSITION OF GCM's/SPCM's

General courts-martial consist of a military judge and at least five members. The military judge is not considered a member of the court. Special courts-martial consist of at least three members and may or may not have a military judge detailed. Detailing of an MJ is not mandatory in SPCM's. However, the *Military Justice Act of 1968* requires that a military judge be detailed to any special court-martial in which a BCD is adjudged, except when unavailable because of physical conditions or military exigencies. The military judge is the military counterpart of the civilian judge. On courts-martial to which he has been detailed, he may sit with members, or if the accused so requests, he may hear the case alone. Thus, you can readily see that a GCM may proceed with a judge and members, or if requested by the accused, with the judge only. But an SPCM may proceed with a judge and members, with members only, or with the judge only when requested by the accused. Before a case may be tried before the military judge alone, the accused, knowing the identity of the military judge and after consultation with his counsel, must request in writing that the court be composed only of the MJ.

### Qualifications of Court Members

Any commissioned officer, including commissioned warrant officers, on active duty with the Armed Forces is eligible to serve on a court-martial. Any warrant officer on active duty with the Armed Forces is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer. Any enlisted person on active duty with the Armed Forces who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of enlisted persons brought before such courts for trial. However, he may serve as a member of a court only if, prior to the assembling of such court, the accused has personally requested in writing that enlisted persons serve on it.

When convening a court-martial, the CA should detail as members such persons as, in his opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. The *UCMJ* directs that when it can be avoided, no person is to be tried by a court-martial any member of which is junior to him in rank or grade. No person is eligible to sit as a member of a GCM or SPCM when he is the accuser, a witness for the prosecution, or has acted as investigating officer or counsel in the same case. If, as the case proceeds, it unexpectedly becomes necessary to call a member of the court as a witness for the prosecution, he is then excused from further duty as a member in that case.

### Enlisted Members

If the accused before a GCM or SPCM, prior to the assembling of the court, requests that enlisted persons sit as members of the court, the CA must appoint such enlisted persons to compose at least one-third of the membership of the court. If, however, enlisted personnel cannot be obtained because of physical conditions or military exigencies, the trial may proceed without enlisted membership, but the CA must make a detailed written statement to be appended to the record stating why they could not be obtained. For example, where the only enlisted men on duty at an isolated station or on board a ship at sea are members of the same unit as the accused and no other enlisted persons can be obtained without obvious injury to the service, the convening authority may, in his discretion, direct that the trial be held without enlisted members. "Unit" is defined as any organization for which a separate unit personnel diary is prepared. Mere inconvenience is not a ground for proceeding with a trial without enlisted persons. The detailed statement appended to the record stating that enlisted persons could not be obtained as members is subject to review when the record of trial is examined under Articles 65, 66, or 69 of the *UCMJ.*

## DUTIES OF COURT PERSONNEL

The following paragraphs discuss the duties of court personnel—the members, the judge, counsel for both sides, and the reporter.

### Duties of Court Members

The senior member present at the trial is president of the court for that trial. He has the same duties, powers, and privileges as other members, and the following are some of his additional powers and duties:

- He consults with the TC to set the time and place of the trial, and to prescribe the uniform to be worn;
- He administers the oath to counsel not previously sworn when no MJ is detailed; and
- He speaks for the court in announcing the findings and sentence.

The members of a court-martial hear the evidence, determine the guilt or innocence of the accused, and adjudge a proper sentence where the accused has been found guilty.

If it becomes necessary to seat a new member because the court has been reduced below a quorum, the new member is sworn, and an opportunity to challenge is given. After he is seated, he is brought up-to-date with the previous proceedings and the evidence previously introduced. This may be done by one of the following methods:

- the trial proceeds as if no evidence has been introduced, i.e., starts from scratch as if the accused had just pleaded;
- the recorded testimony of each witness previously examined is read to him in open court; or
- a stipulation of the testimony previously introduced is read to him in open court.

### Qualifications and Duties of the MJ

The term military judge applies to an official of both the special and general courts-martial whose duties include those of the former GCM law officer plus other duties. His main qualifications and duties are as follows:

He must be a commissioned officer of the Armed Forces who is a member of the bar of a Federal Court, or a member of the highest court of a State of the United States, and who is certified to be qualified for such duty by the Judge Advocate General of the Navy.

He is not eligible to act as military judge in a case if he is the accuser, or a witness for the prosecution, or if he has acted as an investigating officer, or counsel in the same case. An officer who has served as a member should not be detailed as military judge for a rehearing or a new trial of the same case. Prior participation in the same case as convening authority, military judge, staff judge advocate, or legal officer to the CA may be a ground for challenge for cause.

The MJ may be challenged for cause, but not peremptorily. Peremptory challenge does not require any reason or ground to be stated and is not disputed.

The MJ should not be changed during the progress of a trial, except for a good reason. He is present at all times during the trial of a case except when the court is closed to deliberate or vote. The MJ present at the conclusion of the proceedings authenticates the record of trial.

The MJ is responsible for the fair and orderly conduct of the proceedings. He does not vote upon findings or sentence, but does finally rule upon all challenges for cause, all questions of law and all interlocutory questions except the questions of the mental responsibility of the accused, and he recesses or adjourns the court as appropriate.

After the court has voted on the findings, the MJ may, at the request of the court, and in open session, assist in putting the findings in proper form. Before the court closes to vote upon a sentence, he advises as to the maximum punishment which may be imposed.

### Duties of Counsel

Each general and special court-martial must have a trial counsel and a defense counsel, with such assistants as are deemed necessary by the convening authority. The terms "counsel," "trial counsel," and "defense counsel," should be interpreted to mean the detailed counsel named in the convening order. The term "individual counsel" refers to military counsel selected by the accused, or to civilian counsel provided by the accused at his own expense.

Trial counsel and defense counsel detailed for a GCM must be of equivalent legal qualifications; each must be a judge advocate of the Army, Navy, Air Force, or Marine Corps or a law specialist of the Coast Guard, who is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and must be certified as competent to perform such duties by the Judge Advocate General of the Armed Force of which he is a member; or, in the case of civilian counsel, he must be a member of the bar of a Federal court or of the highest court of a State.

In the case of SPCM's the accused must be afforded the opportunity to be represented by counsel qualified under Article 27(b), *UCMJ*, unless such counsel cannot be obtained because of physical conditions or military exigencies. If qualified defense counsel cannot be obtained because of physical conditions or military exigencies or if the accused has declined qualified counsel, an SPCM is not legally constituted unless the following jurisdictional requirements are also satisfied:

- If the detailed trial counsel or any assistant trial counsel is qualified to act as counsel before a GCM, the detailed defense counsel must be a person similarly qualified; or
- If the detailed trial counsel or any assistant trial counsel is a judge advocate, or a law specialist, or a member of the bar of a Federal court or the highest court of a State, the detailed defense counsel must be one of the foregoing.

Usually, as many assistant defense counsel as assistant trial counsel should be detailed, and officers detailed as such should have comparable military experience and legal qualifications. If the prosecution or defense in any GCM devolves upon an assistant counsel, such assistant counsel must be qualified in the sense of Article 27(b), *UCMJ*.

A person who acted as investigating officer, military judge, or court member in a case may not act subsequently as trial counsel, assistant trial counsel, or unless expressly requested by the accused, as defense counsel or assistant defense counsel in the same case. A person who has acted for the prosecution may not act subsequently in the same case for the defense, nor may any person who has acted for the defense act in the same case for the prosecution. A person who has acted for the accused at a pre-trial investigation or other proceeding involving the same general matter is ineligible to act thereafter for the prosecution. An accuser, unless expressly requested by the accused, may not act as defense counsel or assistant defense counsel in the same case.

TRIAL COUNSEL.–The TC prosecutes in the name of the United States, and under the direction of the court, prepares the record of proceedings. His duties might be compared to those of a civil district attorney. As to each offense charged, the burden is on the prosecution to prove the guilt of the accused beyond a reasonable doubt. Of course, such burden of proof is relieved by a plea of guilty, where such plea is provident. The many duties of the TC vary widely from the time he is detailed through the preparation for trial; the trial itself; and the preparation and disposition of the record of trial.

DEFENSE COUNSEL.–The duties of the DC are similar to those of counsel for a defendant in a civil court, with a few variations obviously due to the military aspects of a court-martial. He does his best, by all ethical and lawful means, to provide effective legal representation for the accused regardless of his personal opinion in the matter. The DC informs the accused that he has been detailed to defend him, speaks for the accused in court, and protects his interests. He explains to the accused his general duties, and advises him of his right to be represented by individual counsel–civilian counsel (if provided by the accused at his own expense), and military counsel selected by him, if reasonably available, or by the defense counsel detailed by the CA. If the accused prefers to select his own counsel, the detailed defense counsel and his assistant act as associate counsel if the accused so desires. Otherwise they may be excused.

Some of the duties of the defense counsel are:

- To advise the accused of his right to have enlisted membership on the court.
- To explain the meaning and effect of a guilty plea, if appropriate.
- To advise the accused of his right to introduce evidence; to testify or to remain silent; if and after findings of guilty are announced, to make an unsworn statement and to introduce evidence as to matters in extenuation and mitigation; and to assert any proper defense or objection.

### Duties of the Reporter

Your duties as the detailed reporter are to maintain an accurate verbatim record of all that occurs during open sessions (including Article 39(a) sessions, "side-bar" conferences, and hearings out of the presence of the court members), of the trial, recording such things as times at which the court opens, closes, recesses, and so forth. Marking exhibits, recording movements of personnel in the courtroom and describing gestures and actions of witnesses are also a part of your reporting duties. Chapter 4 deals extensively with your reporting duties and with the preparation of the record of trial. Appendixes I and II illustrate verbatim and summarized records of trial and should be used as a guide when questions arise as to how the record should be prepared.

## CONVENING COURTS-MARTIAL

The authority to convene a GCM is vested in top echelon commands only. For example, the commanding officer of a ship is authorized to convene a special or summary court-martial. He does not have authority to convene a general court-martial, however, unless empowered to do so by the President of the United States or the Secretary of the Navy.

Pursuant to Article 22, *UCMJ*, only the following are specifically authorized to convene general courts-martial for the Navy:

- The President of the United States;
- The Secretary of the Navy;
- The commander in chief of a fleet; the commanding officer of a naval station or larger shore activity of the Navy beyond the United States;
- any other commanding officer as may be designated by the Secretary of the Navy; or

- any other commanding officer of any of the Armed Forces when empowered by the President.

Section 0103 of the *JAG Manual* empowers additional Navy and Marine Corps commanders to convene GCM's. In general, they are the Chief of Naval Operations, the Commandant of the Marine Corps, and all other flag and general officers in command. Certain other commanders also are specifically empowered in the above instruction, but it is suggested that the currently effective edition of the directive be consulted when such information is required.

Special courts-martial are convened pursuant to Article 23, *UCMJ*. The following officers are specifically empowered to convene SPCM's under this article:

- Any person who may convene a GCM;
- the commanding officer of any naval or Coast Guard vessel, shipyard, base, or station; the commanding officer of any Marine brigade, regiment, detached battalion, or corresponding unit; the commanding officer of any Marine barracks, wing, group, separate squadron, station, base, auxiliary air field, or other place where members of the Marine Corps are on duty;
- the commanding officer of any separate or detached command or group of detached units of any of the armed forces placed under a single commander for this purpose; or
- the commanding officer or officer in charge of any other command when empowered by the Secretary of the Navy.

Again, Section 0103 of the *JAG Manual* empowers additional Navy and Marine Corps commanders to convene SPCM's. Refer to the cited section for a listing of these commanders.

Summary courts-martial may be convened, pursuant to Article 24, *UCMJ*, by:

- Any person who may convene a general or special court-martial;
- the commanding officer or officer in charge of any command when empowered by the Secretary of the Navy.

By definition, the "convening authority" is the person empowered by law to create a court-martial, and who in fact creates it. As stated above, the basis of the power to convene courts-martial is the *UCMJ*. The power is vested in the office–not in the individual filling the office–and cannot be transferred or delegated.

**Convening Orders**

Courts-martial are convened by means of a convening order issued by the convening authority. The convening order must be personally subscribed by the convening authority. Without a convening order, no court-martial can be held, with one exception. The exception is that when there is only one officer attached to the command, he is the SCM of that command and no order detailing him as an SCM is needed.

A court is usually created to hear a number of cases, but may be created to hear only one case in special circumstances. In detailing a new court, the old court should not be dissolved nor should the old convening order be rescinded or revoked. One good reason for this is that if the court which heard a case which was returned for proceedings in revision has already been dissolved there can be no proceedings in revision.

Circumstances will determine whether a new court is convened to hear the case or whether the case will be referred to an existing court. In the first instance, there will be a new convening order prepared. In the latter, a current convening order may be used, or it may be amended as necessary. Amendments may become necessary when there is an insufficient number of officer members available or when the court may be reduced below a quorum, or when the assignment of enlisted members is required in accordance with the request of an enlisted accused.

The text of the convening order indicates the basic authority to convene the court, the place it is to meet, the military judge, the members, and the members of the prosecution and defense. The legal qualifications of the military judge and the members of the prosecution and defense should be set forth. If enlisted personnel are detailed as members of the court pursuant to a proper request by the accused, the unit to which each is attached must be shown. Amendments to the convening order may be made in detailing enlisted members, replacing members excused by the CA, or adding new members to bring the court membership up to a legal quorum. Figures 8-2 and 8-3 illustrate the format for convening orders. Figure 8-4 illustrates an amendment to a convening order.

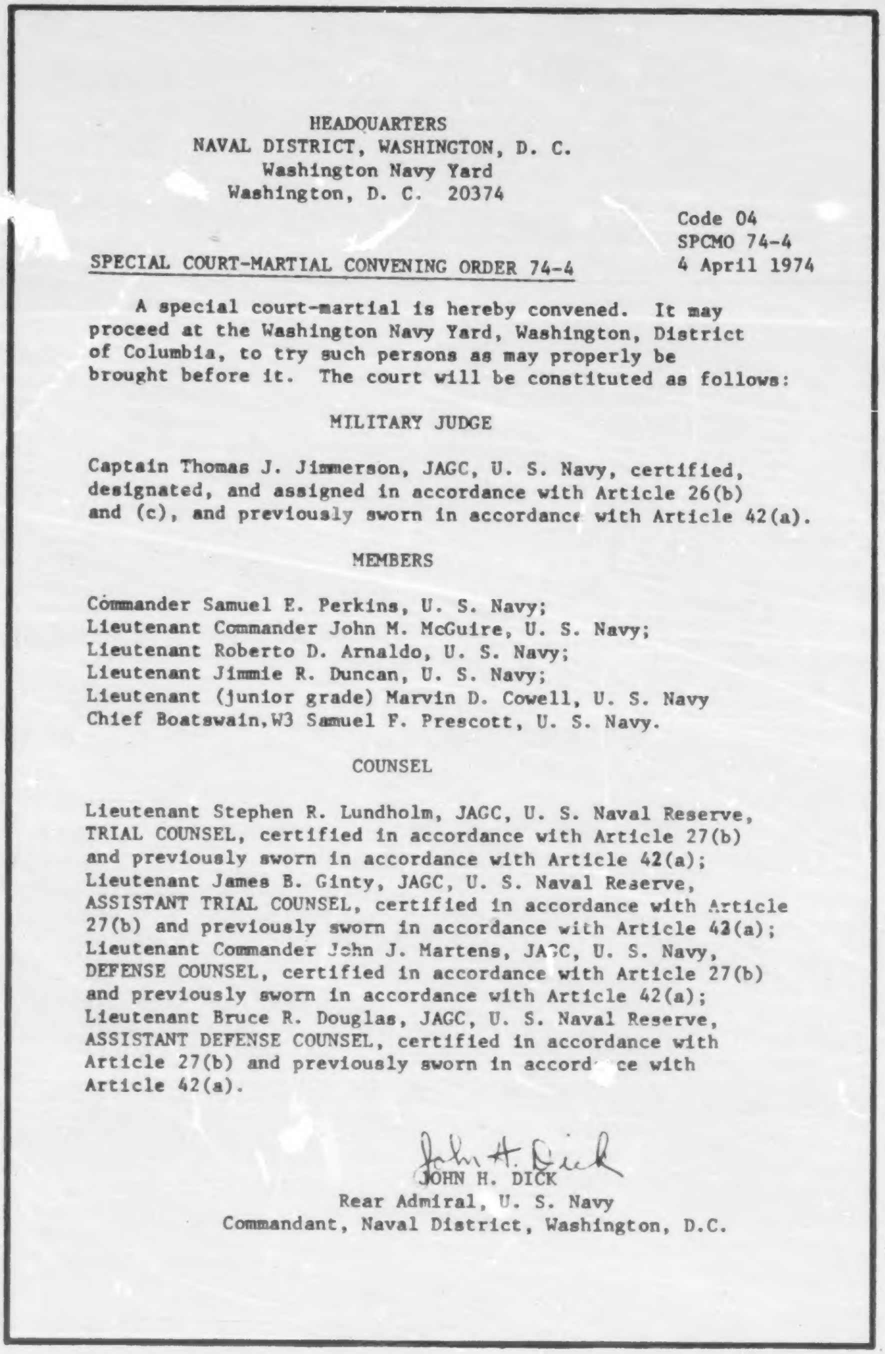
## THE TRIAL PROPER

Briefly, let's take a look at the main parts of a court-martial trial. In this manner you can get an overview of the entire trial while many of the items are covered in greater detail later in the chapter:

- Pre-Arraignment–that portion of the trial where preliminary matters such as the reading of the convening order, accounting for persons present or absent, swearing of reporter, stating of qualifications of the TC and DC, swearing of the court, assembly of the court, and challenges for cause and peremptory challenges are taken care of.
- Arraignment–The formal accusation of the accused made in open court and the procedure of asking him for his pleas. The pleas are not part of the arraignment.
- Motions–Requests, if any, made prior to pleas to the court that it take some desired action or that it grant some form of relief.
- Pleas–The formal statement of the accused with respect to his guilt or innocence of the offenses charged.
- Opening Statement–A statement by the TC prior to presenting the prosecution's case. The DC may make his opening statement at this point or may wait and make it prior to opening his case.
- Prosecution's Case in Chief–That part of the trial where the TC introduces all of the authentic, relevant and competent evidence to prove each element of all of the offenses.
- Defense's Case in Reply–That part of the trial where the DC introduces, if he desires, all of the authentic, relevant and competent evidence to prove the accused innocent of all of the offenses to which he has entered a plea of not guilty. Before presenting his case, the DC may make an opening statement similar to that of the TC.
- Prosecution's Case in Rebuttal–Where the TC may present evidence rebutting any matters or issues raised during the defense's case in reply.
- Defense's Case in Surrebuttal–Where the DC may present evidence rebutting any matters or issues raised by the prosecution during the prosecution's case in rebuttal.
- Evidence Called for by the Court–That part of the trial where, if the court is not satisfied with the evidence presented to that point, it may call new witnesses or direct the TC to recall witnesses to present new or further evidence.
- Arguments on Findings–Where both the TC and DC are given an opportunity to present to the court, by way of oral argument, the facts, circumstances, and inferences of the case in the light most favorable to their respective sides.
- Instruction on Findings–That part of the trial where the ruling officer instructs the court on the law applicable to the case.
- Findings–When court members go into closed session to determine the guilt or innocence of the accused.
- Announcing Findings–When the Court opens and announces its determination of the guilt or innocence of the accused.
- Presentence Procedures–That part of the trial where both the trial counsel and defense counsel present relevant matters concerning the accused which will help the Court determine an appropriate sentence.

Matters presented by the TC would include the personal data concerning the accused, evidence of previous convictions, and matters in aggravation. The DC presents matters in extenuation and mitigation.

- Argument on Punishment–The TC and DC have the right to present argument on an adequate and appropriate sentence.
- Instructions on Sentence–That phase of the trial where the court is instructed on the maximum permissible punishment that may be imposed in the case, and voting procedures.
- Closed Session to Deliberate on Sentence–When the court closes to deliberate on the punishment to be imposed.
- Announcement of Sentence–The court opens and announces to all parties the punishment that the court has voted to impose on the accused.



HEADQUARTERS
NAVAL DISTRICT, WASHINGTON, D. C.
Washington Navy Yard
Washington, D. C. 20374

Code 04
SPCMO 74-4
4 April 1974

SPECIAL COURT-MARTIAL CONVENING ORDER 74-4

A special court-martial is hereby convened. It may proceed at the Washington Navy Yard, Washington, District of Columbia, to try such persons as may properly be brought before it. The court will be constituted as follows:

MILITARY JUDGE

Captain Thomas J. Jimmerson, JAGC, U. S. Navy, certified, designated, and assigned in accordance with Article 26(b) and (c), and previously sworn in accordance with Article 42(a).

MEMBERS

Commander Samuel E. Perkins, U. S. Navy;
Lieutenant Commander John M. McGuire, U. S. Navy;
Lieutenant Roberto D. Arnaldo, U. S. Navy;
Lieutenant Jimmie R. Duncan, U. S. Navy;
Lieutenant (junior grade) Marvin D. Cowell, U. S. Navy
Chief Boatswain,W3 Samuel F. Prescott, U. S. Navy.

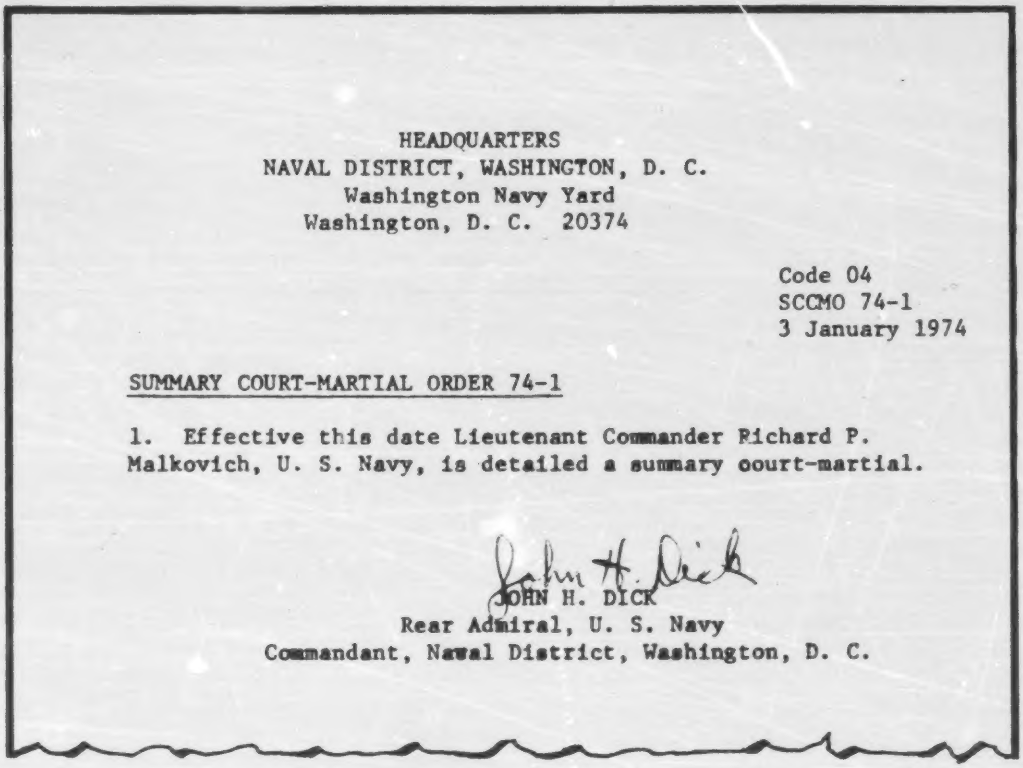
COUNSEL

Lieutenant Stephen R. Lundholm, JAGC, U. S. Naval Reserve, TRIAL COUNSEL, certified in accordance with Article 27(b) and previously sworn in accordance with Article 42(a); Lieutenant James B. Ginty, JAGC, U. S. Naval Reserve, ASSISTANT TRIAL COUNSEL, certified in accordance with Article 27(b) and previously sworn in accordance with Article 42(a); Lieutenant Commander John J. Martens, JAGC, U. S. Navy, DEFENSE COUNSEL, certified in accordance with Article 27(b) and previously sworn in accordance with Article 42(a); Lieutenant Bruce R. Douglas, JAGC, U. S. Naval Reserve, ASSISTANT DEFENSE COUNSEL, certified in accordance with Article 27(b) and previously sworn in accordance with Article 42(a).

John H. Dick
JOHN H. DICK
Rear Admiral, U. S. Navy
Commandant, Naval District, Washington, D.C.

192.43

Figure 8-2.—Special Court-Martial Convening Order.



HEADQUARTERS
NAVAL DISTRICT, WASHINGTON, D. C.
Washington Navy Yard
Washington, D. C. 20374

Code 04
SCCMO 74-1
3 January 1974

SUMMARY COURT-MARTIAL ORDER 74-1

1. Effective this date Lieutenant Commander Richard P. Malkovich, U. S. Navy, is detailed a summary court-martial.

John H. Dick
JOHN H. DICK
Rear Admiral, U. S. Navy
Commandant, Naval District, Washington, D. C.

192.44

Figure 8-3.—Summary Court-Martial Order.

Now let's take a closer look at some of the items included in the main points listed above. We pick up from the point where the court is assembled.

**Assembling the Court**

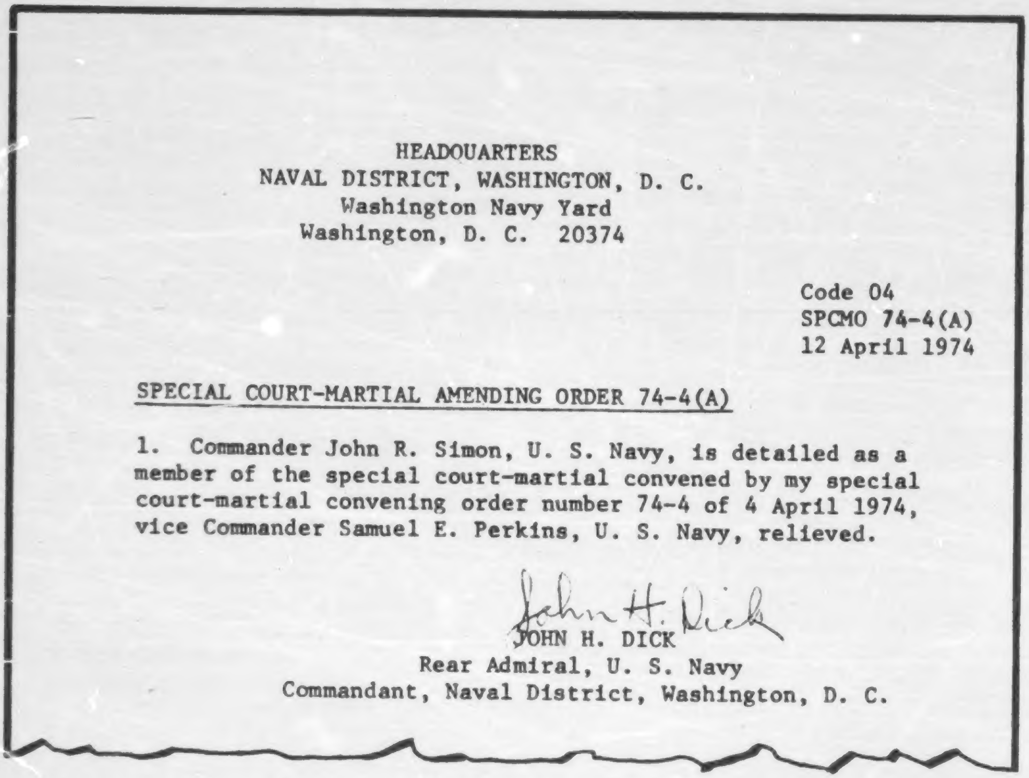
Trial personnel meet at the time and place, and in the uniform, designated by the president of the court. The members are seated alternately to the right and left of the president, according to rank. The military judge is seated apart from the members. The remainder of the personnel involved are separately seated in an arrangement roughly similar to that shown in figure 8-5 or 8-6, as appropriate.

The MJ begins with the words, "The court will come to order." Trial counsel then states who has convened the court, and names the members of the court who are present as well as those absent. The TC then swears you in as reporter. Trial and defense counsel state their own qualifications, and the MJ asks the TC whether a request has been made for enlisted membership. Note that the court has not yet been officially assembled.

After confirming whether there has been a request for enlisted membership, the MJ directs the TC to assemble the court.

When the TC announces "The court will be sworn," all persons in the courtroom will stand until the members of the court, the MJ, and counsel have been sworn. The oaths are administered in the following order:

- TC swears in all members.
- TC swears in MJ.
- The MJ (or president in an SPCM without an MJ) swears in TC.



HEADQUARTERS
NAVAL DISTRICT, WASHINGTON, D. C.
Washington Navy Yard
Washington, D. C. 20374

Code 04
SPCMO 74-4(A)
12 April 1974

SPECIAL COURT-MARTIAL AMENDING ORDER 74-4(A)

1. Commander John R. Simon, U. S. Navy, is detailed as a member of the special court-martial convened by my special court-martial convening order number 74-4 of 4 April 1974, vice Commander Samuel E. Perkins, U. S. Navy, relieved.

John H. Dick
JOHN H. DICK
Rear Admiral, U. S. Navy
Commandant, Naval District, Washington, D. C.

192.45

Figure 8-4.—Special Court-Martial Amending Order.

- The MJ swears in individual counsel, if he has not been previously sworn.

After the court is duly sworn, the military judge announces, "The court is now assembled." As reporter, your job is to get all this down for the record. While the oaths themselves do not have to be transcribed in the record of trial, you should nevertheless record them verbatim. See Appendix I for examples of standard stock entries to be used in transcribing the information concerning oaths in the record of trial.

### Challenges

The court having now been assembled, the TC announces the general nature of the charges, and states any ground for challenge of which he is aware. This is the point at which the TC may also make his peremptory challenge, although this may be done later. He then asks whether the accused (defense counsel) wishes to challenge any member of the court, either for cause or peremptorily.

### Arraignment

After challenges are completed, the accused is arraigned. This means that the man on trial is formally accused of the offenses before the court. It is done by the TC reading from the charge sheet the charges and specifications, the name and description of the accuser, the affidavit of the witnessing officer, the reference for trial by the CA, and the date the charges were formally served on the accused. The accused may waive the actual reading of the charges and specifications in court, if he so desires. However, they are copied verbatim into the record at this point, or a copy thereof is inserted in the record

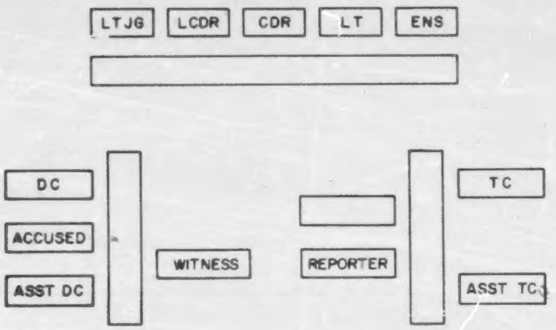


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**Figure 8-5.—Special Court-Martial Seating Arrangement (Without a Military Judge).**

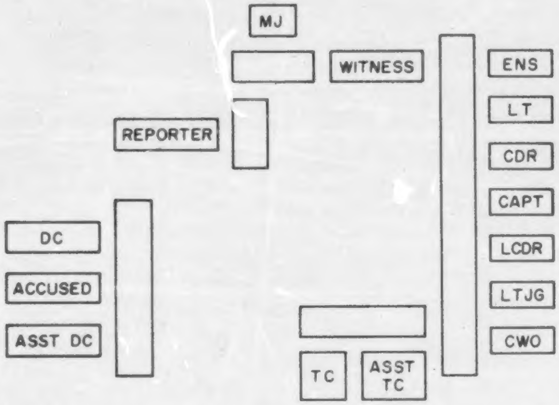

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**Figure 8-6.—General Court-Martial Seating Arrangement (and SPCM with Military Judge).**

whether or not the accused waives the actual reading aloud of the charges and specifications. After announcing the date that the charges were served upon the accused, the trial counsel (military judge, if detailed) asks the accused how he pleads. The TC, (MJ, if detailed) before the actual plea is made, advises the accused that any motion to dismiss any charge or to grant other relief should be made at this time. Such motions might include motions to sever, for continuance, or for examination of the accused because of suspected insanity. All proceedings and actions thereon are recorded. Final ruling on such motions is made by the military judge or president in an SPCM without an MJ detailed, except that a ruling on the question of the accused's mental responsibility is subject to objection by any member of the court and may be overruled by the court.

### The Plea

The accused and his counsel rise while entering the plea. If the accused enters a guilty plea, there are a number of essential matters which must be explained to him. Rather than attempting to specify those matters which must be included, it is recommended that you set out the entire inquiry verbatim in every case. Then, you will not have questions about what you should include or leave out in summarized records of trial.

See Appendix II for the procedures to be followed in setting down the plea in both guilty and not guilty cases.

### Case for the Prosecution

If there is a plea of not guilty to any specification, the prosecution proceeds. Witnesses introduced are sworn by the TC. Usually the first two questions asked every witness are formal and are asked by the TC. These two questions are to have the witness identify himself, and to determine if he knows the accused. When questioning prosecution witnesses, the TC proceeds through what is referred to as the direct examination. When he completes his questioning of a witness, the DC, if he so desires, conducts a cross-examination of the witness. If the DC cross-examines a witness, the TC conducts a redirect examination if he has further questions to ask the witness. This redirect examination may be followed by a recross-examination by the DC.

When recording testimony of witnesses, be prepared for objections by opposing counsel. Do not assume that the line of questioning will continue uninterrupted. When objections are voiced, they must appear in the record along with the ruling of the MJ or president, as appropriate, thereon. Remember too, that all testimony must be recorded verbatim. If the questioning and answering proceed at an unreasonable rate of speed for accurate recording, you, as the reporter, should request that the rate be slowed down.

After each counsel has finished questioning a witness, any questions by the court and evidence elicited by these questions is subject to objection on proper grounds by either side. The MJ, or president of an SPCM without an MJ, may require members to submit their questions to him, either orally or in writing, so that a ruling may be made on the propriety of the questions or course of questioning and so that the questions may be asked on behalf of the court in either their original or rephrased form by the MJ or president, as appropriate, or the TC. When the TC has presented all his evidence, he rests his case. When a witness has completed giving his testimony, he is warned not to discuss his testimony with anyone. The witness is then excused from the courtroom.

**Case for the Defense**

The defense now has its turn. Counsel presents an opening statement, if desired, and introduces stipulations, witnesses, and evidence in a manner similar to that followed by the TC. The DC proceeds with the direct examination of his witnesses, and the TC, if he so desires, conducts the cross-examination of defense witnesses. While the TC swears the defense's witness and asks him questions pertaining to his identity and whether he knows the accused, the DC is first to examine his witness in eliciting evidence in the form of testimony. Each counsel is the first to question his own witness. The opposing counsel then follows with a cross-examination, if desired. Each cross-examination may be followed by re-direct and re-cross examination. When questioning is concluded, the witness is excused from the stand after having been appropriately warned.

The accused may take the stand as a witness in his own behalf, but only at his own request. If he testifies concerning certain specifications only, cross-examination by the TC and the court must be limited to those specifications about which the accused testified.

If the accused does not wish to testify in his own behalf, his failure to take the stand and testify should not create any presumption or inference against him. If he does take the stand as a witness, he is, in general, subject to the same rules of evidence that apply to other witnesses. He becomes subject to cross-examination upon the issues covered in his testimony, and upon the question of his credibility. When the accused voluntarily testifies about an offense for which he is being tried, he thereby waives the privilege against self-incrimination, and any matter relevant to the issue of his guilt or innocence of such offense is properly the subject of cross-examination.

**Arguments**

After all the evidence is introduced, and each side has rested its case, arguments by counsel may be made, although they are not required. If made, they may be oral or written. Oral arguments are recorded verbatim. A written argument must be attached as an exhibit for the side which presented it. Trial counsel may make an opening argument. This is a final discussion of the case by the TC directed to the court. He uses this argument to summarize and point out certain features of the case to convince the court that the accused is guilty as charged. Regardless of whether the TC makes an argument (and he usually will), the DC may also make one. If the DC makes an argument, the TC may make a final closing argument. This order of arguments is followed in all courts because the prosecution has the burden of proof. In other words, the TC has the responsibility of proving the accused is guilty as charged. The accused is presumed to be innocent and does not have to prove himself innocent. And, since the TC has the burden of proof, he is given the last word.

**Conclusion of the Case**

The case is near conclusion when the MJ or president, in open court, advises the court members, among other things, as to the elements of proof required to convict the accused of each offense with which he is charged. Further, he advises the court that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt, and that if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted. In addition, he advises the court of such other matters as are required, and any advice to the court or any additional instructions he may desire to give.

The court is then closed for the findings. All persons except the court members leave the courtroom, and the members vote by secret written ballot. After the findings have been reached, court is reopened, all parties to the trial return, and the findings are announced by the president in open court.

If the accused is found not guilty on every specification, the president so states and the president or military judge asks whether the trial counsel has any other cases to try at this time; if not, the court is adjourned.

If the accused is found guilty of any specification, the president announces on which specifications, if any, he was acquitted.

After findings of guilty are announced, trial counsel reads the personal data concerning the accused shown on the charge sheet, and introduces evidence of previous convictions, if any. At this time the TC introduces any matters in aggravation, and the DC introduces any matters in extenuation or mitigation. If desired, the accused may make an unsworn statement. This statement may be oral or in writing, or both, and it may be made by the accused, his counsel, or both.

The MJ, or president in an SPCM without an MJ, advises the court of the maximum punishment which may be adjudged for the offenses of which the accused has been found guilty and instructs the court on voting procedures. The court is again cleared and the members vote on the sentence by secret written ballot. Forms of sentences appear in the MCM. As soon as the sentence is determined, court is opened and the sentence announced by the president. After the sentence has been announced, a recommendation for clemency may be submitted in accordance with established procedure. The trial is now finished.

If the accused has been found guilty, the defense counsel explains his appellate rights, and if desirable, prepares a clemency petition and an appellate brief. The defense counsel usually examines the record of trial before it is forwarded to the CA.

### Summary of Main Steps

In review, here are the main steps in a trial by GCM or SPCM, in order of occurrence:

- Military judge (or president) calls court to order.
- Reporter is sworn by TC, unless he has previously been sworn.
- Qualifications of counsel stated.
- Discussion of request for enlisted membership.
- Court sworn:
  a. Members and MJ sworn by the TC.
  b. TC/ATC and DC/ADC sworn by MJ (or president) unless previously sworn.
- Court assembled.
- Challenges, if any, presented:
  a. Any member may be challenged for cause.
  b. The prosecution and defense are each entitled to one peremptory challenge; i.e., a challenge which requires no ground to be stated and is not subject to objection.
- Accused arraigned.
- Motions for appropriate relief and rulings thereon made.
- Plea(s).
- Presentation of prosecution case.
- Presentation of defense case.
- Arguments by counsel.
- Court closed for determination of findings—court opens and findings announced.
- Personal data concerning the accused is presented.
- Court closed for determination of sentence—court opens—sentence announced.
- Court adjourns.

### Summary of Trial Counsel's Duties

Because you will be assisting the TC with many of his duties, some of the most important are listed below.

PRIOR TO TRIAL.—Some of the TC's duties prior to trial are to:

- Proceed promptly to trial with charges referred to trial.

- Report to the CA if the membership of the court is reduced below a quorum.
- *Correct and initial slight* errors or obvious mistakes in the charges and specifications, but not make any substantial changes in them without proper authority.
- Serve immediately upon receipt, a copy of the charge sheet, as received and corrected by him, on the accused, and to so inform the detailed defense counsel.
- Assure that the data on the charge sheet and any evidence of previous convictions are complete and free of errors.
- Give timely notice to all concerned as to the time and place of any meeting of the court.
- Notify and arrange to have present at the trial all witnesses who are to testify including defense witnesses.
- Advise the defense of the probable witnesses to be called by the prosecution.
- Obtain a room and any required materials for the court, and to have prepared a copy of the charges and specifications for each member of the court and the M.J.

DUTIES DURING TRIAL.–The TC's duties during trial include:

- Keeping, or superintending the keeping of the record of proceedings.
- Where appropriate, joining in stipulations with a view toward saving time and expense. A stipulation is an agreement between the trial and defense counsels as to the truth of a certain fact.
- If he considers it advisable, to make a brief opening statement of the issues, and what he expects to prove.
- Conducting the direct and redirect examinations of his witnesses and the cross and recross-examinations of defense witnesses.
- Conducting the direct and redirect examinations of witnesses called by the court, and if they are adverse to the prosecution, to conduct cross-examination on behalf of the prosecution.

DUTIES AFTER TRIAL.–The TC's main duties after trial are:

- Upon adjournment of the court, to notify the CA and the immediate CO of the accused of the results of the trial, including the findings and sentence imposed by the court.
- To ensure that the record of trial is properly prepared. This is where you, as the reporter, will be involved.
- To give the accused a copy of the record and all exhibits received in evidence as soon as possible after the record is authenticated, less any classified information which must be deleted from the accused's copy of the record.
- To obtain from the accused a receipt for the copy of the record furnished him. This receipt must be attached to the record of trial. If it is impracticable to obtain a receipt from the accused before the original record is forwarded to the CA, the TC attaches to the original record a certificate to the effect that a copy has been transmitted to the accused giving the method of transmission, the addressee, and a statement that the receipt of the accused will be forwarded to the CA as soon as it is received.
- To forward to the CA the original and a sufficient number of copies of the record and accompanying papers as required.

Now that we have covered GCM and SPCM procedures, let's take a look at SCM procedures.

## SUMMARY COURT-MARTIAL

One commissioned officer or commissioned warrant officer on active duty may constitute an SCM. By policy, however, the SCM should be a Navy lieutenant or Marine captain or above and should be the person of the command who is best qualified to perform the duties of the SCM by reason of age, education, training, experience, length of service and judicial temperament. Also, he must be of the same Armed Force as the accused.

### Purpose of SCM

The purpose of the SCM is to exercise justice promptly for relatively minor offenses. A simple form of procedure allows cases to be handled swiftly with a minimum of delay.

### Right to Counsel

An accused who submits to trial by SCM has an absolute right to be represented at the trial by a civilian lawyer who he (the accused) has retained at his own expense.

After charges have been referred, the SCM officer must determine whether the accused has retained or intends to retain a civilian attorney to represent him at trial. If the accused has not retained and does not intend to retain a civilian lawyer, the SCM officer must ask the accused whether he desires to be represented by military defense counsel. If the accused desires to be represented by military defense counsel, the SCM officer should immediately notify the CA.

When acting on the request of the accused for military defense counsel, the CA has two courses of action open to him. He may either appoint a military defense counsel to represent the accused and allow the trial to proceed; or he may refuse to appoint such counsel. If he refuses to appoint military defense counsel to represent the accused, the CA should sign special instructions and attach them to the first endorsement of the charge sheet (on page 3 of the charge sheet). The special instructions should read as follows:

> "Military defense counsel will not be appointed to represent the accused in this case. The summary court-martial officer is directed that confinement at hard labor not be adjudged as part of the sentence unless the accused is represented at trial by a lawyer."

You should note here that the accused may refuse to submit to trial by SCM after the CA has refused to appoint a military defense counsel to defend him. (In fact, he has the right to refuse trial by SCM up until the time evidence is presented on the issue of his guilt or innocence).

If the accused indicates that he has not retained nor does he intend to retain civilian counsel, and that he does not desire to be represented by military defense counsel, a waiver of counsel should be signed by the accused and witnessed (signed) by the SCM officer. The waiver of counsel should state:

> "I have been advised by the summary court-martial officer that I cannot be tried by summary court-martial without my consent and that if I consent to trial by summary court-martial, I may be represented by counsel provided at my own expense. If I do not desire to be represented by civilian counsel provided at my own expense, a military defense counsel may be appointed to represent me upon my request. It has also been explained to me that if I choose to proceed to trial by summary court-martial without defense counsel, it will constitute a waiver of my right to counsel, and if I am convicted, a sentence which includes confinement at hard labor may be imposed. Understanding all of this, I consent to trial by summary court-martial and desire to proceed to trial without a defense counsel."

Military defense counsel need not be appointed when an accused has retained a civilian attorney.

"Military defense counsel" means a lawyer qualified under Article 27(b), *UCMJ*, unless such a qualified military lawyer is not reasonably available. In such a case, the CA may detail a nonlawyer commissioned officer to act as defense counsel. If this is done, however, care must be taken to select a nonlawyer officer who has an adequate background in military justice matters. When nonlawyer military defense counsel is detailed, the CA must append to the record a comprehensive written statement setting forth the reason(s) why counsel qualified under Article 27(b), *UCMJ*, could not be detailed to represent the accused. If a nonlawyer is detailed to represent the accused, the sentence cannot include confinement at hard labor.

### Miscellaneous Matters

We have already discussed who may convene courts-martial. However, one difference between convening an SCM and GCM's/SPCM's is that there is no law or policy disqualifying an "accuser" from convening an SCM. Another thing to remember is that if only one officer is attached to the command, he is the summary court-martial for that command. Thus, you can see that in the SCM, the convening authority, the accuser, and the SCM may be one and the same person.

Another difference between the SCM and GCM/SPCM is that no reporter need be detailed to the SCM. Any necessary clerical functions may be performed by any available clerical assistant.

As previously stated, the accused before an SCM must consent to trial by SCM. He has the right to refuse trial regardless of whether he has been given the previous election of refusing Article 15 punishment. This option is not available to persons facing SPCM's or GCM's. If the accused does not consent to trial by SCM, the CA has the option of referring the charges for trial by SPCM or dismissing the charges.

### SCM Duties Prior to Trial

Upon receipt of the charges and accompanying papers, the SCM officer should begin preparation for trial. The charge sheet should be carefully examined, and all obvious administrative, clerical, and typographical errors should be corrected. The SCM officer should initial each correction he makes on the charge sheet. If the errors are so numerous as to require preparation of a new charge sheet, reswearing of the charges and re-referral of the charges to the SCM by the CA is required.

If the SCM officer changes an existing specification to include any person, offense, or matter that is not fairly included in the original specification, it (the new specification) must be resworn, re-referred, and re-served on the accused.

The SCM officer should continue his examination of the charge sheet to determine the correctness and completeness of the following:

- The accused's name, social security number, rate, and pay grade.
- Data concerning pay.
- Data as to witnesses, documents, and objects.
- Data as to restraint.
- Signature, rank or rate, and Armed Force of the accuser.
- Signature and authority of officer who administered oath to the accuser.
- Date of receipt of sworn charges by officer exercising summary court-martial jurisdiction. This date is important as it stops the running of the statute of limitations.
- First Endorsement referring charge(s) to specific SCM for trial. The specifications should be checked to ensure they have been correctly drafted.

The SCM officer should determine the elements of the offense(s) to be proved by reviewing the discussion of the offense(s) in Chapter XXIII, MCM. He should then examine the statements of expected witnesses and the other evidence in the case to determine their admissibility and sufficiency in light of the offense(s) charged.

### Pretrial Interview With The Accused

The SCM officer should conduct a pretrial interview with the accused. It is not the purpose of this interview to elicit from the accused incriminating information to be used later at trial. The SCM officer should conscientiously avoid attempting to gain from the accused any admission or confession concerning the offense(s) charged, or having the accused provide evidence which may be used to demonstrate his guilt. With this in mind the SCM officer should inform the accused of the following:

- The appointment of the SCM by the CA.
- The referral of certain charge(s) and specification(s) to the SCM for trial. The SCM officer should serve a copy of the charge sheet on the accused, and complete the last block on page 3 of the charge sheet noting service on the accused.
- Inform the accused of the general nature of the charges and the details of the specifications thereunder.
- Inform the accused of the name of the accuser and the fact that the charges were sworn to before an officer authorized to administer oaths.
- The names of any witnesses who may be called to testify against the accused at trial, and the description of any real or documentary evidence.
- The accused should then be advised that he has the following legal rights:

  1. The right to object to trial by SCM.
  2. The right to plead not guilty to any charge and/or specification and thereby place the burden of proving his guilt, beyond reasonable doubt, upon the Government.

3. The right to cross-examine all witnesses called to testify against him, or have the SCM officer ask any questions of a witness for the accused.
4. The right to call witnesses and produce any competent evidence in his own behalf and that the SCM officer will assist the accused to secure defense witnesses or other evidence which the accused wishes presented at trial.
5. The right to remain silent, which means that the accused cannot be made to testify against himself nor will the accused's silence count against him in any way should he elect not to testify.
6. The right to be represented at the SCM by a civilian attorney provided by the accused at no expense to the Government.
7. The right to request that a military defense counsel be appointed to represent him at trial (although the CA is under no obligation to appoint a military defense counsel to represent the accused). See the above discussion of the accused's right to counsel.
8. The SCM officer should inform the accused of the maximum permissible sentence that the court may award if he is found guilty of the offense(s) charged. In the case of E-4's and below this cannot be done until the SCM officer has determined whether the accused will be represented by counsel, or has clearly waived his right to be represented by counsel. This is so because confinement at hard labor is not authorized unless the accused is represented by counsel or has clearly waived that right.
9. The right, if the accused is found guilty, to call witnesses or produce other evidence in extenuation or mitigation and the right to make an unsworn statement to the court in his own behalf.

Next, the SCM officer should advise the accused substantially as follows concerning his duties as the SCM officer:

> "It is my duty as the summary court to thoroughly and impartially inquire into the facts and circumstances surrounding the charge(s) against you and to ensure that the interests of the Government as well as yours are safeguarded. As the summary court, I am neither counsel for the Government nor am I your defense counsel. In this regard, nothing that you may tell me shall be considered a privileged communication between us. However, I shall assist you in securing witnesses or other evidence to be presented at trial in your behalf."

At this point, the SCM officer should take care to explain once again the accused's rights with respect to counsel as outlined in the discussion above concerning right to counsel. In addition the SCM officer should tell the accused that if he desires to refuse trial by SCM the CA may, in his discretion, order trial by special or general court-martial. The accused should also be made aware that he is entitled to be represented by a military defense counsel if the charge(s) and specification(s) pending against him are referred to either a special or general court-martial.

Next, the SCM officer should ask the accused the following questions:

"1. Do you intend to consent to trial by SCM?"

"2. Do you intend to plead guilty or not guilty to the offense(s) charged?" NOTE: Before the accused can make an intelligent decision to plead guilty, he should be made aware of the significance of such a plea. The SCM officer should explain the meaning of a guilty plea and ascertain that the accused fully understands the consequences of such a plea.

If the accused indicates that he wishes to refuse trial by SCM, or if there are facts which would impair the SCM officer from conducting a fair and impartial trial, these circumstances should be reported to the CA.

If the accused refuses trial by SCM, the appropriate sections on page 4 of the charge sheet should be filled out and signed by the accused and the SCM officer. The charge sheet and documents accompanying the charges should then be returned to the legal officer.

## Pretrial Preparations

At the conclusion of the pretrial interview, and if the case is to proceed, the SCM officer should obtain from the accused the names of any witnesses or the description of other evidence which the accused wishes presented at the trial.

The SCM officer should arrange for a time and place to hold the open sessions of the trial. These arrangements should be made through the legal officer, and the SCM officer should ensure that the accused and all witnesses are notified of the time and place of the first meeting. No doubt the SCM officer will look to you, as a Legalman, to take care of these details for him.

An orderly trial procedure should be planned to include a chronological presentation of the facts. The admissibility and authentication of all known evidentiary matters should be determined and numbers assigned to all exhibits to be offered at trial. These exhibits, when received at trial, should be marked "received in evidence." The evidence reviewed should include not only that contained in the file as originally received, but also any other relevant evidence discovered by other means. The SCM officer has the duty of ensuring that all relevant and competent evidence in the case, both for and against the accused, is presented.

## SCM Trial Procedure

The actual trial procedure, while somewhat different from that of the GCM/SPCM, is governed by the same general principles and has the same basic procedures as for those courts-martial. Of course, there is only one officer assigned to the court and he has the duty of representing both the Government and the accused. All witnesses testify under oath. There is no provision for making challenges in an SCM. An SCM has the same powers as an SPCM or GCM to subpoena witnesses, take depositions, and punish for contempt of court. The SCM is not sworn.

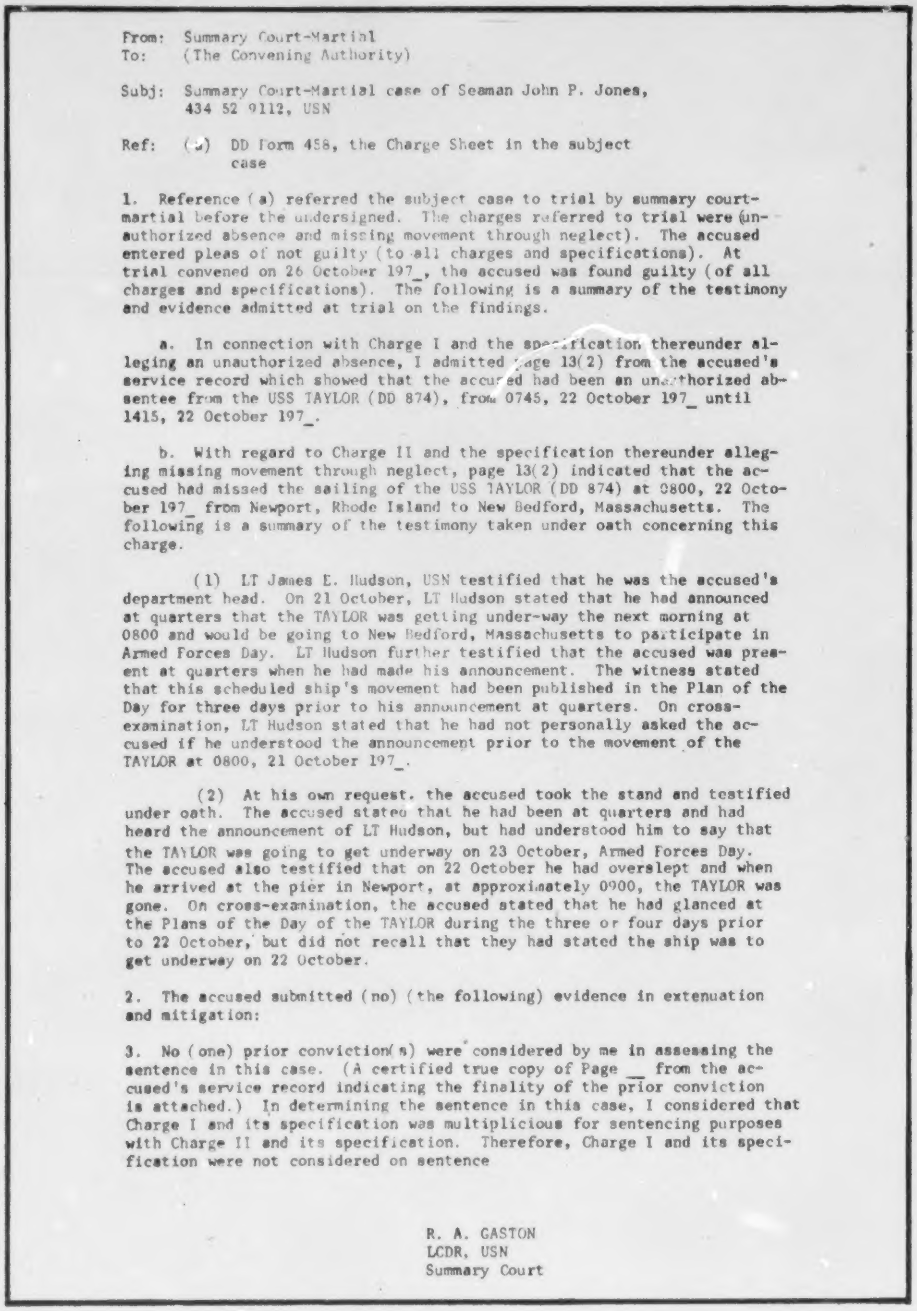
## Posttrial Duties

After the trial, the appropriate sections of the charge sheet must be completed. The first page should correctly contain the names of witnesses who actually appeared, with any deletions lined out and initialed by the SCM officer. The description of any evidentiary material listed on the charge sheet, but not actually offered in evidence, should be deleted in the same manner. Any corrections anywhere on the charge sheet, including deletions, should be initialed by the SCM officer. Page 4 of the charge sheet must be completed and signed by the SCM officer. It is important that all appropriate sections of page 4 be properly completed, for this page is the record of trial for the SCM. The first section of page 4 and the case number should be completed by the CA. A sample page 4 is set forth in figure 4-14 of this text.

If the accused pleads not guilty and is found guilty, a summary of the testimony and evidence submitted by the SCM officer must be appended to the record of trial. In all cases, the SCM officer must summarize the matters presented in extenuation and mitigation and append this summary to the record. For an example of a summary of testimony, see figure 8-7.

In every case where the accused is found guilty at an SCM, the SCM officer must complete and sign a statement concerning the advice that he gave the accused concerning his right to counsel at the SCM. This advice statement should read substantially as follows:

> "In the Summary Court-Martial of (name) convened by the Commanding Officer (activity), and tried on (inclusive dates), the accused was advised that, if tried by summary court-martial, he could be represented by a civilian lawyer, retained by him, at no expense to the Government. In addition the accused was advised that he could request the convening authority to appoint a military defense counsel to represent him at the summary court-martial. The accused was further advised that the convening authority was not obligated to grant his request for detailed military defense counsel. The accused was also informed that failure of the convening authority to grant the request for detailed military defense counsel would result in confinement not being authorized as a part of the sentence if the accused was convicted.



From: Summary Court-Martial
To: (The Convening Authority)

Subj: Summary Court-Martial case of Seaman John P. Jones,
434 52 9112, USN

Ref: (a) DD Form 458, the Charge Sheet in the subject
case

1. Reference (a) referred the subject case to trial by summary court-martial before the undersigned. The charges referred to trial were (unauthorized absence and missing movement through neglect). The accused entered pleas of not guilty (to all charges and specifications). At trial convened on 26 October 197_, the accused was found guilty (of all charges and specifications). The following is a summary of the testimony and evidence admitted at trial on the findings.

a. In connection with Charge I and the specification thereunder alleging an unauthorized absence, I admitted page 13(2) from the accused's service record which showed that the accused had been an unauthorized absentee from the USS TAYLOR (DD 874), from 0745, 22 October 197_ until 1415, 22 October 197_.

b. With regard to Charge II and the specification thereunder alleging missing movement through neglect, page 13(2) indicated that the accused had missed the sailing of the USS TAYLOR (DD 874) at 0800, 22 October 197_ from Newport, Rhode Island to New Bedford, Massachusetts. The following is a summary of the testimony taken under oath concerning this charge.

(1) LT James E. Hudson, USN testified that he was the accused's department head. On 21 October, LT Hudson stated that he had announced at quarters that the TAYLOR was getting under-way the next morning at 0800 and would be going to New Bedford, Massachusetts to participate in Armed Forces Day. LT Hudson further testified that the accused was present at quarters when he had made his announcement. The witness stated that this scheduled ship's movement had been published in the Plan of the Day for three days prior to his announcement at quarters. On cross-examination, LT Hudson stated that he had not personally asked the accused if he understood the announcement prior to the movement of the TAYLOR at 0800, 21 October 197_.

(2) At his own request. the accused took the stand and testified under oath. The accused stated that he had been at quarters and had heard the announcement of LT Hudson, but had understood him to say that the TAYLOR was going to get underway on 23 October, Armed Forces Day. The accused also testified that on 22 October he had overslept and when he arrived at the pier in Newport, at approximately 0900, the TAYLOR was gone. On cross-examination, the accused stated that he had glanced at the Plans of the Day of the TAYLOR during the three or four days prior to 22 October, but did not recall that they had stated the ship was to get underway on 22 October.

2. The accused submitted (no) (the following) evidence in extenuation and mitigation:

3. No (one) prior conviction(s) were considered by me in assessing the sentence in this case. (A certified true copy of Page __ from the accused's service record indicating the finality of the prior conviction is attached.) In determining the sentence in this case, I considered that Charge I and its specification was multiplicious for sentencing purposes with Charge II and its specification. Therefore, Charge I and its specification were not considered on sentence

R. A. GASTON
LCDR, USN
Summary Court

192.47

Figure 8-7.—SCM Officer's Summary of Testimony.

> Finally, the accused was advised of his right to refuse trial by summary court-martial."

Written recommendations may be made to the CA by the SCM officer, if he deems it appropriate that clemency in any form be extended to the accused; e.g., that the CA consider suspension of all or any part of the sentence. The SCM officer must remember that the power to suspend a sentence rests in the CA or superior authority only.

Upon completion, the record of trial must be forwarded to the CA for his action. See chapter 4 for a discussion of the preparation of SCM records of trial.

## SENTENCES

In all cases of conviction, a court-martial should adjudge a legal, appropriate, and adequate punishment. When the court closes to deliberate on the sentence, it should consider the instructions given by the ruling officer on the maximum permissible limits of punishment and the evidence and other matters before the court which affect the sentence. Deliberation may properly include full and free discussion by the members of the court. The punishment which a court-martial may direct for an offense may not exceed the limits prescribed for that offense by the President of the United States. These limits are prescribed in the Table of Maximum Punishments (paragraph 127, *MCM*).

Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court-martial or inflicted upon any person subject to the *Code*. Neither may courts-martial impose any punishment not sanctioned by the custom of the service, such as carrying a loaded knapsack, shaving of the head, placarding, pillorying, placing in stocks, or tying up by the thumbs.

### DETERMINING THE SENTENCE

After the ruling officer has instructed the court on voting procedures and the maximum permissible limits of punishment, the court closes to determine the sentence.

Subject to the jurisdictional limits placed on the sentencing powers of the court, the maximum authorized punishment for each of several offenses may be imposed, provided the offenses are separate. Generally, offenses are considered to be separate if each offense requires proof of an element not required to prove the other. See paragraph 76a(5), *MCM*. The general procedure used in determining the sentence is as follows:

- Add together the punishments listed in the Table of Maximum Punishments for each separate offense of which the accused stands convicted.
- Calculate the effect of any applicable escalator or acceleration clauses. See Section B of the Table of Maximum Punishments (*MCM*, paragraph 127).
- The maximum authorized punishment will be the least of the following:
  (1) The jurisdictional limits of the court.
  (2) The total punishment from the Table of Maximum punishments (paragraph 127c, *MCM*).
  (3) If the trial is a rehearing, the sentence adjudged at the previous trial as reduced by reviewing authorities.

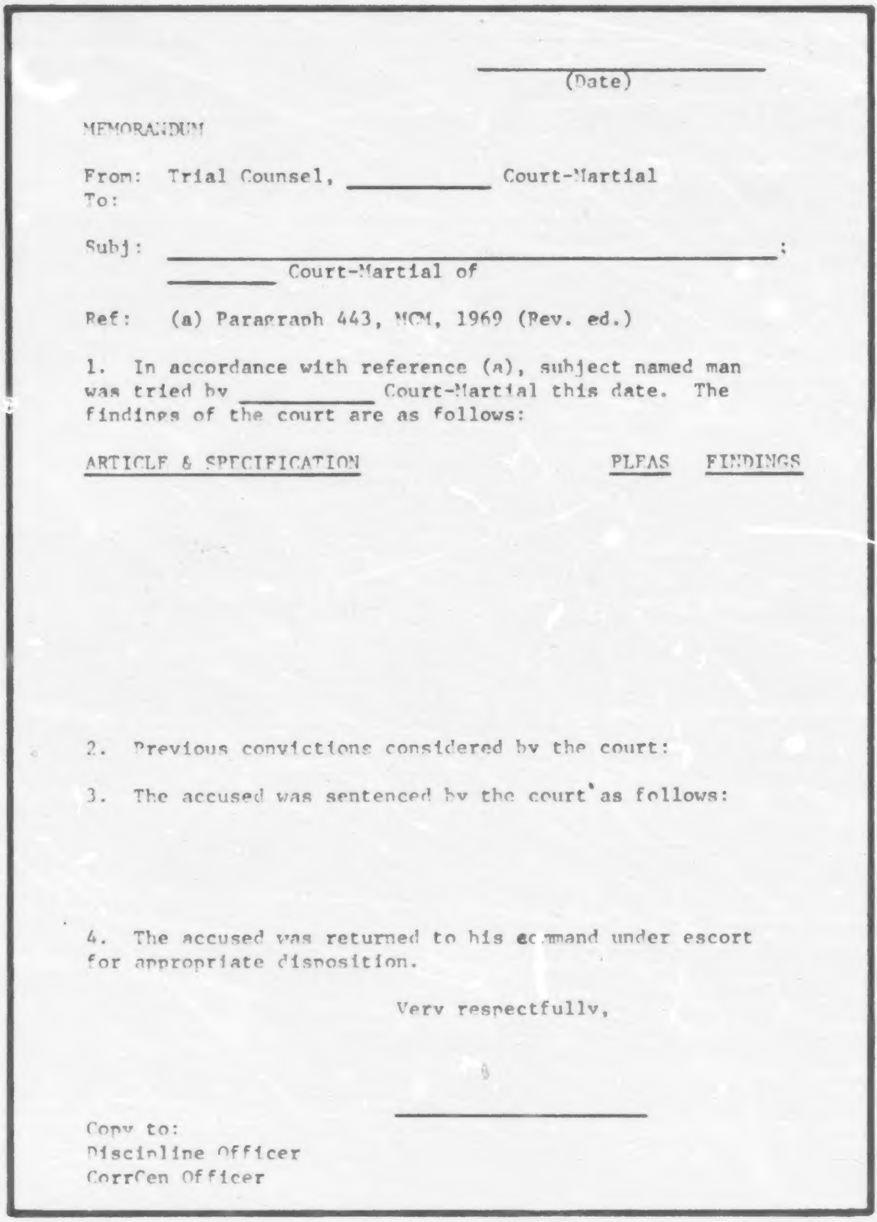
### NOTIFICATION OF RESULTS OF TRIAL

Immediately after the trial is completed the TC should notify the CA and the accused's CO, if other than the CA, of the results of the trial and, if the accused was found guilty, the sentence adjudged.

It is advisable to use some sort of form for this purpose. A locally prepared form may be used if necessary. The form should contain sufficient information to identify the accused, show the findings and sentence, and disposition of the accused after trial (if convicted). A form similar to that illustrated in figure 8-8 should be used for this purpose.

### EFFECTIVE DATE OF CERTAIN SENTENCES

Article 57 of the *Code* deals with the effective date of certain sentences. This article provides,



____________________
(Date)

MEMORANDUM

From: Trial Counsel, __________ Court-Martial
To:

Subj: ________________________________________;
________ Court-Martial of

Ref: (a) Paragraph 443, MCM, 1969 (Rev. ed.)

1. In accordance with reference (a), subject named man was tried by __________ Court-Martial this date. The findings of the court are as follows:

| ARTICLE & SPECIFICATION | PLEAS | FINDINGS |
|---|---|---|

2. Previous convictions considered by the court:

3. The accused was sentenced by the court as follows:

4. The accused was returned to his command under escort for appropriate disposition.

Very respectfully,

____________________

Copy to:
Discipline Officer
CorrCen Officer

192.48

Figure 8-8.—Notification of Trial Results.

inter alia, that when forfeitures of pay are adjudged in addition to confinement not suspended, the forfeitures apply to pay or allowances becoming due on and after the date the sentence is approved by the CA. No forfeiture may extend to any pay or allowances accrued before the date a sentence is approved by the CA.

Except as provided above, all other sentences to forfeiture and sentences to fine or detention of pay become effective on the date the sentence is ordered executed.

Sentences to confinement at hard labor begin to run from the date the sentence is adjudged by the court-martial. However, periods during which the sentence to confinement is suspended or deferred must be excluded in computing the term of confinement.

When the sentence of an accused, as affirmed by the Navy Court of Military Review (CMR), includes an unsuspended dishonorable or bad-conduct discharge or confinement for one year or more, it may not be executed until completion of appellate review, i.e., the expiration of the 30-day appeal period if no petition for review is filed, or final review by the U.S. Court of Military Appeals (COMA). However, an accused may request immediate execution of an unsuspended punitive discharge immediately following the completion of the confinement portion of his sentence, if any. Such a request may be approved by the officer exercising GCM jurisdiction in those cases in which the punitive discharge has been affirmed by the CMR and if:

- the sentence either does not include confinement, or
- the confinement portion of the sentence has been or will be completed prior to 30 days from the date the accused is served with a copy of the CMR decision, and
- the conditions for approval prescribed in section 0135 of the *JAG Manual* are satisfied.

Article 58a of the *Code* provides for automatic reduction to pay grade E-1 in certain instances, unless otherwise prescribed by the Secretary concerned. It is the policy of the Department of the Navy that *automatic* reduction to the lowest enlisted pay grade *not* be effected in the naval service. However, it is also the policy of the Department of the Navy that enlisted persons sentenced to confinement exceeding three months or to a DD or BCD also be *sentenced* to reduction to the lowest enlisted pay grade. The sentence of the court in such cases should expressly include reduction to the lowest enlisted pay grade.

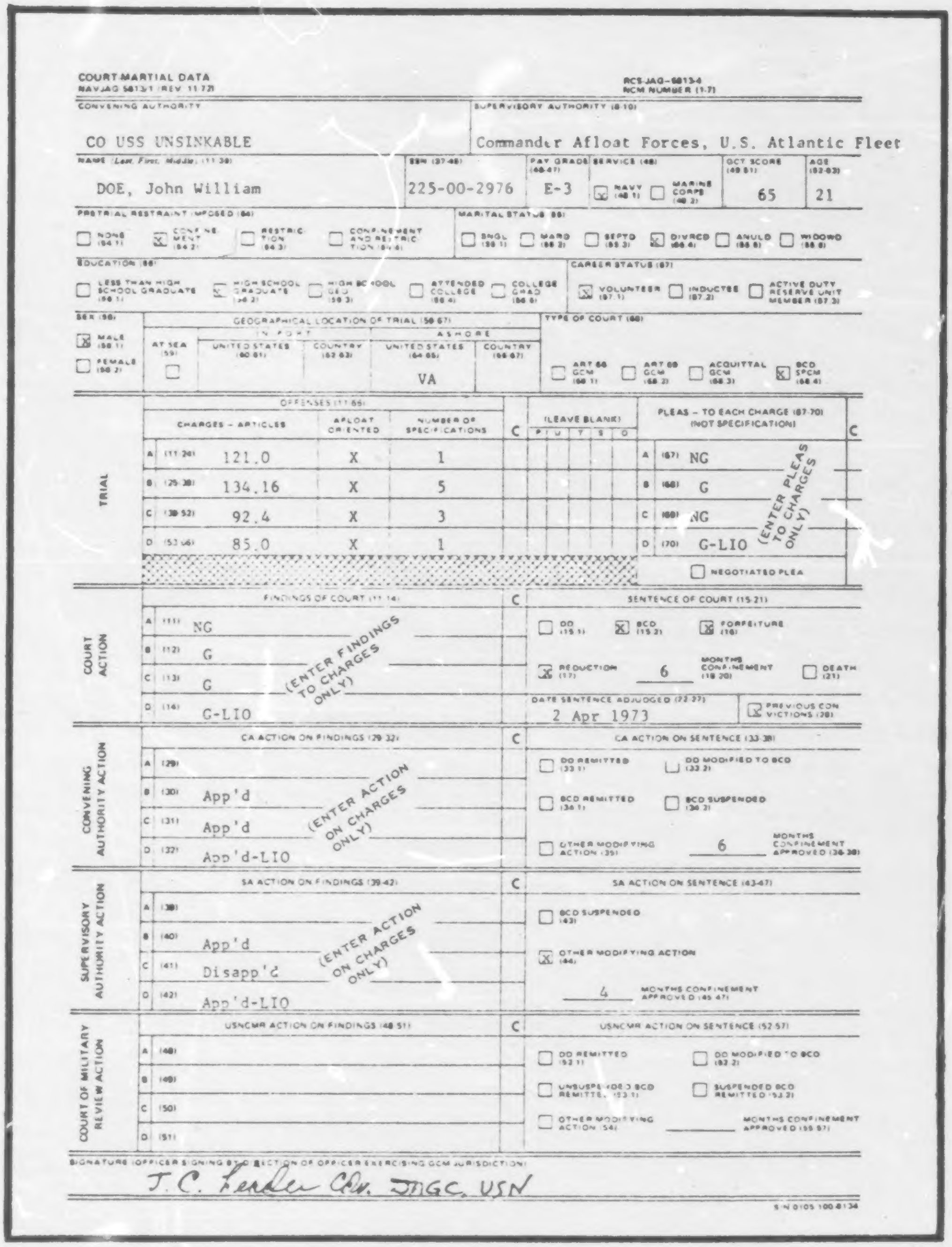
If the sentence includes, unsuspended, a DD or BCD or confinement for one year or more, execution of any reduction included in the sentence may not be accomplished until the sentence has been affirmed by the CMR, and in cases reviewed by it, the COMA.

Generally, all other sentences adjudged by courts-martial are effective on the date they are ordered executed, unless suspended or deferred. See Articles 55 through 58a and 71, *UCMJ*.

## DEFERMENT OF SENTENCE

On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is assigned, may in his sole discretion defer service of the sentence to confinement. The deferment terminates when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned.

Approved forfeitures may not be applied during any period in which the service of a sentence to confinement is deferred. In the action or order deferring the service of confinement, the officer directing such action should, when forfeitures have also been adjudged, include a statement to the effect that the application of the remaining forfeitures is deferred until the sentence is ordered into execution, unless such deferment is sooner rescinded. When deferment of confinement is rescinded, or the sentence to confinement is ordered into execution, the order promulgating such action should state whether the forfeitures are to apply effective the date of the rescission or at a subsequent date.



**COURT-MARTIAL DATA**
NAVJAG 5813/1 (REV. 11-72)

RCS-JAG-5813-4
NCM NUMBER (1-7)

CONVENING AUTHORITY: CO USS UNSINKABLE

SUPERVISORY AUTHORITY (8-10): Commandεr Afloat Forces, U.S. Atlantic Fleet

| NAME (Last, First, Middle) (11-36) | SSN (37-45) | PAY GRADE (46-47) | SERVICE (48) | GCT SCORE (49-51) | AGE (52-53) |
|---|---|---|---|---|---|
| DOE, John William | 225-00-2976 | E-3 | ☒ NAVY (48.1) ☐ MARINE CORPS (48.2) | 65 | 21 |

PRETRIAL RESTRAINT IMPOSED (54): ☐ NONE (54.1) ☒ CONFINEMENT (54.2) ☐ RESTRICTION (54.3) ☐ CONFINEMENT AND RESTRICTION (54.4)

MARITAL STATUS (55): ☐ SNGL (55.1) ☐ MARD (55.2) ☐ SEPTD (55.3) ☒ DIVRCD (55.4) ☐ ANULD (55.5) ☐ WIDOWD (55.6)

EDUCATION (56): ☐ LESS THAN HIGH SCHOOL GRADUATE (56.1) ☒ HIGH SCHOOL GRADUATE (56.2) ☐ HIGH SCHOOL GED (56.3) ☐ ATTENDED COLLEGE (56.4) ☐ COLLEGE GRAD (56.5)

CAREER STATUS (57): ☒ VOLUNTEER (57.1) ☐ INDUCTEE (57.2) ☐ ACTIVE DUTY RESERVE UNIT MEMBER (57.3)

SEX (58): ☒ MALE (58.1) ☐ FEMALE (58.2)

GEOGRAPHICAL LOCATION OF TRIAL (59-67)

| AT SEA (59) | IN PORT<br>UNITED STATES (60-61) | IN PORT<br>COUNTRY (62-63) | ASHORE<br>UNITED STATES (64-65) | ASHORE<br>COUNTRY (66-67) |
|---|---|---|---|---|
| ☐ | | | VA | |

TYPE OF COURT (68): ☐ ART 66 GCM (68.1) ☐ ART 69 GCM (68.2) ☐ ACQUITTAL GCM (68.3) ☒ BCD SPCM (68.4)

**TRIAL**

OFFENSES (11-66)

| | | CHARGES – ARTICLES | AFLOAT ORIENTED | NUMBER OF SPECIFICATIONS | C | (LEAVE BLANK) P | I | U | T | S | O |
|---|---|---|---|---|---|---|---|---|---|---|---|
| A | (11-24) | 121.0 | X | 1 | | | | | | | |
| B | (25-38) | 134.16 | X | 5 | | | | | | | |
| C | (39-52) | 92.4 | X | 3 | | | | | | | |
| D | (53-66) | 85.0 | X | 1 | | | | | | | |

PLEAS – TO EACH CHARGE (67-70) (NOT SPECIFICATION) (ENTER PLEAS TO CHARGES ONLY)

| | | | C |
|---|---|---|---|
| A | (67) | NG | |
| B | (68) | G | |
| C | (69) | NG | |
| D | (70) | G-LIO | |

☐ NEGOTIATED PLEA

**COURT ACTION**

FINDINGS OF COURT (11-14) (ENTER FINDINGS TO CHARGES ONLY)

| | | | C |
|---|---|---|---|
| A | (11) | NG | |
| B | (12) | G | |
| C | (13) | G | |
| D | (14) | G-LIO | |

SENTENCE OF COURT (15-21): ☐ DD (15.1) ☒ BCD (15.2) ☒ FORFEITURE (16) ☒ REDUCTION (17) 6 MONTHS CONFINEMENT (18-20) ☐ DEATH (21)

DATE SENTENCE ADJUDGED (22-27): 2 Apr 1973

☒ PREVIOUS CONVICTIONS (28)

**CONVENING AUTHORITY ACTION**

CA ACTION ON FINDINGS (29-32) (ENTER ACTION ON CHARGES ONLY)

| | | | C |
|---|---|---|---|
| A | (29) | | |
| B | (30) | App'd | |
| C | (31) | App'd | |
| D | (32) | App'd-LIO | |

CA ACTION ON SENTENCE (33-38): ☐ DD REMITTED (33.1) ☐ DD MODIFIED TO BCD (33.2) ☐ BCD REMITTED (34.1) ☐ BCD SUSPENDED (34.2) ☐ OTHER MODIFYING ACTION (35) 6 MONTHS CONFINEMENT APPROVED (36-38)

**SUPERVISORY AUTHORITY ACTION**

SA ACTION ON FINDINGS (39-42) (ENTER ACTION ON CHARGES ONLY)

| | | | C |
|---|---|---|---|
| A | (39) | | |
| B | (40) | App'd | |
| C | (41) | Disapp'd | |
| D | (42) | App'd-LIO | |

SA ACTION ON SENTENCE (43-47): ☐ BCD SUSPENDED (43) ☒ OTHER MODIFYING ACTION (44) 4 MONTHS CONFINEMENT APPROVED (45-47)

**COURT OF MILITARY REVIEW ACTION**

USNCMR ACTION ON FINDINGS (48-51)

| | | | C |
|---|---|---|---|
| A | (48) | | |
| B | (49) | | |
| C | (50) | | |
| D | (51) | | |

USNCMR ACTION ON SENTENCE (52-57): ☐ DD REMITTED (52.1) ☐ DD MODIFIED TO BCD (52.2) ☐ UNSUSPENDED BCD REMITTED (53.1) ☐ SUSPENDED BCD REMITTED (53.2) ☐ OTHER MODIFYING ACTION (54) ____ MONTHS CONFINEMENT APPROVED (55-57)

SIGNATURE (OFFICER SIGNING BY DIRECTION OF OFFICER EXERCISING GCM JURISDICTION): J. C. Fender CDR. JAGC, USN

S/N 0105-100-8134

21.28

Figure 8-9.—Court-Martial Data, NAVJAG Form 5813/1.

See Appendixes 14 and 15 of the *MCM* for forms of the CA's action and forms for promulgating orders.

## TRIAL RECORDS

The record of trial is prepared by you, as the court reporter, under the supervision of the TC. The TC, in turn, is responsible to the court to ensure that the record is properly prepared. Whether a summarized or verbatim record is prepared depends upon the status of the accused and the sentence adjudged.

In cases affecting a flag officer, or including the sentence of death, dismissal, dishonorable or bad-conduct discharge, or confinement for one year or more, you must prepare an original and two copies of each record and of all documentary exhibits received in evidence for forwarding for review. An additional copy must be prepared for each accused. You must also prepare a court-martial data form (NAVJAG 5813/1) in all GCM cases and all SPCM cases involving a BCD. See figure 8-9.

In all other cases you prepare an original only of each record and of all documentary exhibits received in evidence to be forwarded for review. Again, an additional copy of the record must be prepared for each accused tried. Notwithstanding the above, the CA may require that additional copies of the record be prepared.

If the accused is acquitted there need not be a complete summarized or verbatim record. The record in such a case need contain only sufficient information to show that the court was properly constituted and had jurisdiction to try the accused on the offenses charged.

The actual preparation and assembly of records of trial is covered in Chapter 4. Appendixes I and II provide examples of verbatim and summarized records of trial. You should refer to Chapter 4 and Appendixes I and II for information on the preparation of records of trial.

## FORWARDING OF RECORDS OF TRIAL

As soon as the record is authenticated, the TC gives the accused a copy of the record and all documentary exhibits received in evidence. A receipt of the accused for the copy of the record furnished him is obtained and attached to the original record of trial. The original record and accompanying papers are then forwarded by the TC to the headquarters of the CA.

Once the record has been prepared, authenticated, and forwarded to the convening authority, the review process begins. Review of courts-martial is covered in Chapter 9.

## Chapter 9

# POSTTRIAL

As a Legalman, it is important that you know something about the mechanics of court-martial review. Our discussion in this chapter, therefore, is to prepare you for discharging your posttrial duties in connection with courts-martial from the time the record is transcribed, authenticated, and forwarded to the convening authority until final disposition of the case. Covered, among other things, is the review process, preparation of court-martial orders, confinement orders, preparation of required service record entries, and the final disposition of trial records.

## REVIEW OF COURTS-MARTIAL

Every court-martial case must be reviewed. In general, the higher the type of court-martial concerned, the more extensive the review process. After every court-martial the record must be forwarded to the CA for initial review and action. Until the CA has acted on the record, no part of the sentence can be executed against the accused.

### THE CONVENING AUTHORITY

Who is the convening authority? The term "convening authority" includes the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or any person exercising GCM jurisdiction. The person who convened the court-martial which adjudged the sentence in a particular case normally is the convening authority who takes initial action on the record of trial. The power of a CA to take initial action on a record of trial vests in the office, not in the person, of the authority so acting. Thus, when an assigned commander is not present for duty with his command because of illness, leave, or for any other cause, the commissioned officer temporarily succeeding to command during that absence is, within the meaning of Article 60, UCMJ, the officer commanding for the time being, and, as such, is authorized to take initial action as CA on a record of trial of a court convened by the assigned commander. Similarly, if an officer has assumed permanently the command functions of a predecessor by reason of reassignment, combining of command, or otherwise, he is a successor in command and is authorized to take initial action as CA on a record of trial of a court convened by his predecessor.

When it is impracticable for the person who convened the court, the commissioned officer commanding for the time being, or a successor in command, to take initial action upon a record of trial, this action may be taken by any officer exercising GCM jurisdiction. For example, in a case in which a command has been deactivated, action upon a sentence adjudged by a court-martial convened by the commander prior to the deactivation may be taken by any officer exercising GCM jurisdiction.

Similar action would be appropriate if the person who normally would take action as CA is disqualified, as when he has granted immunity to a witness for the prosecution or when a member of the court-martial which tried the accused subsequently became the officer commanding for the time being or the successor in command. In these cases the normal CA must forward the record of trial under a letter of transmittal to an officer exercising GCM jurisdiction. The letter of transmittal must be forwarded via the chain of command and must contain a statement of the reasons for the failure of the normal convening authority to act on the record.

### CA's Review

The responsibility for conducting the review belongs to the CA. It cannot be delegated. The CA must personally sign the action on the record. However, in the usual case, the actual examination of the record is accomplished by the CA's legal officer, who then submits recommendations to the CA.

If the case is a GCM, the CA must have it reviewed by his Staff Judge Advocate before he takes action. This review by the SJA must be in writing and must include a statement of the proceedings, including clemency recommendations, if any; a summary of the evidence, including matters of aggravation, mitigation, and extenuation; his opinion as to the adequacy and weight of the evidence; his opinion as to the effect of any error or irregularity respecting the proceedings; and his specific recommendation as to the action to be taken by the CA with regard to the findings and sentence.

In SPCM cases, if the CA has GCM authority and a BCD is involved, he must have the record reviewed by his SJA before he takes his action. The SJA's review must be in writing and contain those same items named in the preceding paragraph. If the CA has only SPCM authority, he will usually designate one of his officers (lawyer or non-lawyer) to be his legal officer and have him review the record before he takes his action. This review is not mandatory and it may be made orally or in written form, as desired by the CA.

Any person who has previously acted in the case as counsel, the MJ, a member, the investigating officer, or the accuser is barred from reviewing a record of trial as legal officer for the CA.

### Scope of CA's Review

In cases in which the proceedings result in an acquittal or a ruling amounting to an acquittal, the review is limited to ascertaining whether the court had jurisdiction. That is:

- Was the court properly convened and constituted?
- Did the court have jurisdiction over the accused and the offense(s)?

In acquittal cases, the CA's action should read as follows: "The court was properly appointed and constituted, and had jurisdiction over the offense and the accused."

In cases in which the proceedings result in conviction and sentencing, the record must be reviewed to ascertain whether:

- The court had jurisdiction.
- The accused was sane.
- There is competent evidence in the record to establish each element of the offense of which the accused was found guilty beyond a reasonable doubt. In this connection the CA has the power to weigh the evidence and to judge the credibility of witnesses. If the evidence is not sufficient to establish each element of the offense charged, the CA may approve a finding of guilty of some lesser included offense (LIO), if evidence establishes the LIO, or may disapprove the findings completely (which amounts to an acquittal). The CA may consider matters outside the record if they would motivate a disapproval or reduction of a finding. He may not consider matters outside the record to supply deficiencies in evidence so as to allow approval of a finding.
- There are any errors which materially prejudice the substantial rights of the accused, such as erroneous instructions by the ruling officer or admission of an involuntary confession.
- The sentence is legal, that is, does it exceed any of the limitations on punishments, such as jurisdictional limits; the table of maximum punishments; limitations based on rank, rate, or Armed Force of the accused; or on nature of punishment adjudged.
- The sentence is appropriate for the offense and the offender. The CA may consider matters outside the record of trial in either approving or disapproving the sentence. In fact, Section 0123 of the *JAG Manual* even provides that, where

the sentence includes a punitive discharge, the CA's action must contain a synopsis of the accused's conduct record during his current enlistment, including information concerning prior misconduct not in the record of trial. However, if the CA approves the sentence and in doing so considers matters outside the record of trial, other than matters in the service record of the accused, which were adverse to the accused, he must afford the accused an opportunity to rebut or explain such matters.

### Correction of The Record

In reviewing a record of trial, the CA (and his legal officer) may note errors contained therein. Some of these errors will be harmless and require no corrective action. Others may require disapproval of findings and the sentence unless the error can be corrected before the CA acts on the record. Some record errors may be corrected by a certificate of correction which may be used to correct reporter's errors, that is, to make the record speak the truth. See chapter 4 of this text and Appendix 9d of the *MCM* for further information on certificates of correction.

## FORM OF CA'S ACTION

After reviewing the record, the CA has several alternatives from which to choose in acting on the case. He may simply approve the sentence as adjudged without change or he may disapprove, mitigate or suspend the sentence. Appendix 14 of the *MCM* contains forms to be used by the CA in taking his action on the record. For example, if the sentence is approved without any modification, known as a "straight approval," the appropriate form from Appendix 14, *MCM*, should be used depending on the type of court involved. In an SPCM, a straight approval would be worded as follows:

> "In the foregoing case of Seaman John Paul Jones, U.S. Navy, the sentence is approved and will be duly executed. ____________ is designated as the place of confinement."

The CA's action is prepared on a separate sheet of paper. The organization and place are set forth at the top of the sheet. The date of the action is set forth below the organization and place on the right side of the paper. The following should be set forth in the first paragraph, as appropriate: the specific action the CA is taking, stated in the forms discussed above and contained in Appendix 14, *MCM*; the execution of the sentence; that forfeitures apply or will be deferred; the place of confinement must be designated, or the place of temporary custody; the portion of the original sentence credited to the accused on a rehearing; and/or a restoration of rights, and so on.

The second paragraph should be worded as follows: "The record of trial is forwarded for action under Article 65b" (if it is an SPCM including an approved BCD), or "Article 65c" (if it is a non-BCD SPCM).

The signature of the CA must appear at the end of the page and is followed by the CA's typed name, rank, organization, and his status; that is, "Commanding" or "Officer in Charge," as appropriate.

See Appendixes I and II of this text for illustrations of convening authority's actions.

### Designating Place Of Confinement

If the CA approves and executes confinement, without suspending it, he must designate in his action a place of confinement. This place of confinement must be one of the facilities designated in BUPERS Instruction 1640.17 series. See paragraph 93, *MCM*, and BUPERS Instruction 1640.17 series.

## POST CA APPELLATE REVIEW

The UCMJ provides for an automatic review from the CA's action on every court-martial to higher authority. This is the military equivalent of the civilian "appeal." How high the case will go on this automatic appeal depends, in part, upon the type of court-martial involved and the sentence adjudged. Now, let's take a look at the review of specific types of cases.

### Summary and Non-BCD Special Courts-Martial

In reviewing summary and non-BCD special courts-martial, and not affecting a general or flag officer, the officer exercising general court-martial jurisdiction (OEGCMJ) over the command must cause a judge advocate to review the record. Unless corrective or mitigating action by the OEGCMJ as supervisory authority (SA) is necessary, no "supervisory action" need be taken. In lieu of such an action, it is sufficient if a notation indicating the result of the review is made over the signature of the SJA.

Unless the SA disagrees with the recommendation of the judge advocate who reviewed the record as to a matter of law, the review ends at the SA level. Should there be such a disagreement, however, the record must be forwarded to the Judge Advocate General for resolution.

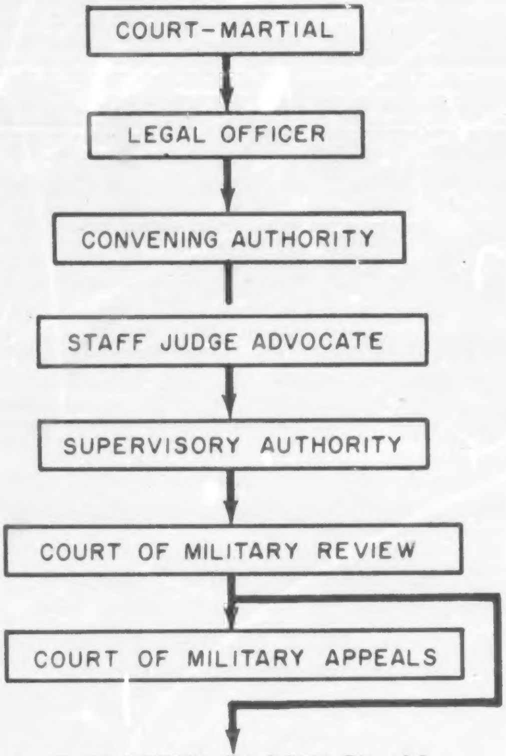
### SPCM Involving A BCD

In SPCM's involving a bad-conduct discharge, the OEGCMJ takes action on the record as the SA. Prior to taking his action on the record, the SA has it reviewed by his Staff Judge Advocate or Staff Legal Officer. If the SA approves the BCD, whether or not he suspends it, the record must be forwarded to the JAG for review by a Court of Military Review.

After review by the Court of Military Review, the case may then go to the Court of Military Appeals (COMA) in the following instances:

- If the case is certified to COMA by JAG.
- If COMA grants the accused's petition for review.
- If the case affects a general or flag officer.

See figure 9-1 for a graphically illustrated review process in BCD special courts-martial.



1. IF CERTIFIED TO COMA BY JAG.
2. IF COMA GRANTS ACCUSED'S PETITION FOR REVIEW.
3. IF CASE AFFECTS A GENERAL OR FLAG OFFICER.

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**Figure 9-1.—Review of BCD special courts-martial.**

### General Courts-Martial

Prior to taking his action on the record, the CA has his Staff Judge Advocate review the case. The CA then takes his action and forwards the record to the Judge Advocate General.

The review in the office of JAG is accomplished as follows:

- The case must be reviewed by a Court of Military Review if the sentence involves a general or flag officer, death, dismissal, a dishonorable or bad-conduct discharge, or confinement for one year or more. Any other GCM is merely examined in the office of JAG unless JAG directs it to be reviewed by a Court of Military Review or the findings or sentence are found unsupported in law.

A general court-martial case may go to COMA in the following instances:

- If certified to the COMA by JAG.
- If COMA grants the accused's petition for review.

- If the case affects a general or flag officer.
- If the sentence includes death.

See figure 9-2 for the review process in GCM's graphically illustrated.

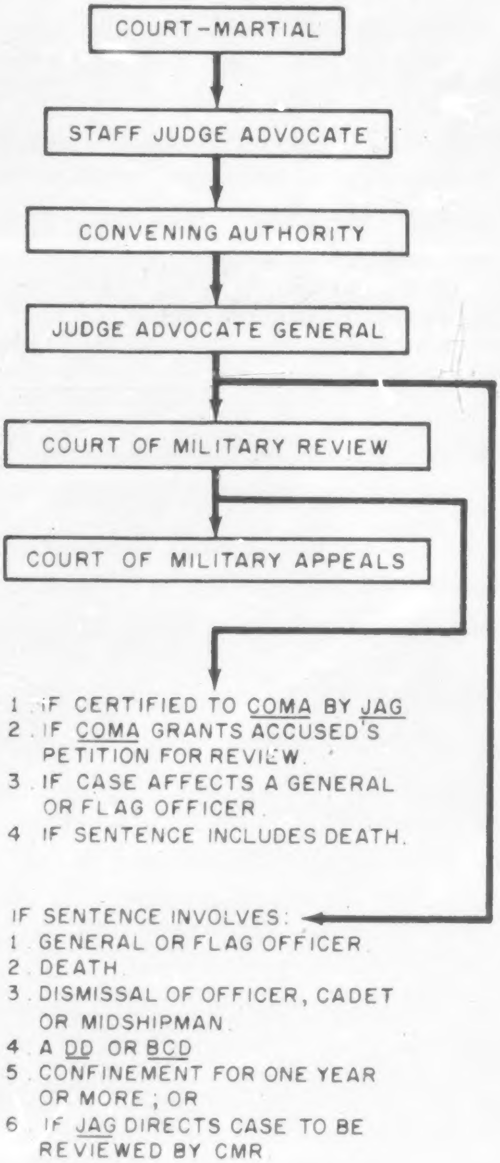
COURT-MARTIAL
STAFF JUDGE ADVOCATE
CONVENING AUTHORITY
JUDGE ADVOCATE GENERAL
COURT OF MILITARY REVIEW
COURT OF MILITARY APPEALS
1. IF CERTIFIED TO COMA BY JAG
2. IF COMA GRANTS ACCUSED'S PETITION FOR REVIEW.
3. IF CASE AFFECTS A GENERAL OR FLAG OFFICER.
4. IF SENTENCE INCLUDES DEATH.
IF SENTENCE INVOLVES:
1. GENERAL OR FLAG OFFICER.
2. DEATH.
3. DISMISSAL OF OFFICER, CADET OR MIDSHIPMAN.
4. A DD OR BCD
5. CONFINEMENT FOR ONE YEAR OR MORE; OR
6. IF JAG DIRECTS CASE TO BE REVIEWED BY CMR

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Figure 9-2.—Review of GCM cases.

## Scope of Appellate Review

Severe sentences may not be executed until approved or affirmed by higher authority. Further review or affirmation may be required by the office of the JAG, his Court of Military Review, by the Court of Military Appeals, and in certain cases, by SECNAV or by the President, depending upon the severity of the sentence as approved by the CA.

The following illustration shows some of the more severe sentences which may be adjudged, and the steps of review required before the sentence may be ordered executed:

| SENTENCE | STEPS OF REVIEW |
|---|---|
| 1. Death, or any sentence involving a flag/general officer | 1. Convening authority<br>2. Court of Military Review<br>3. JAG (see NOTE 1)<br>4. Court of Military Appeals<br>5. President |
| 2. Dismissal of an officer, cadet, or midshipman | 1. Convening authority<br>2. Court of Military Review<br>3. JAG (see NOTE 2)<br>4. Court of Military Appeals<br>5. SECNAV (or such Under Secretary or Assistant Secretary as may be designated by SECNAV) |
| 3. DD/BCD (Whether or not suspended) | 1. Convening authority<br>2. Court of Military Review<br>3. JAG (see NOTE 3)<br>4. Court of Military Appeals |

NOTE 1—If the sentence is approved by the Court of Military Review, the Judge Advocate General forwards the record directly to the Court of Military Appeals without comment. If the Court of Military Appeals approves the sentence, the Judge Advocate General forwards the record to the President along with his recommendations.

NOTE 2—The Judge Advocate General may order that a case be forwarded to the Court of Military Appeals for review. Furthermore, the accused has 30 days from the time he is notified of the decision of the Court of Military Review to petition the Court of Military Appeals for a grant of review. If, after final judicial review, the sentence to dismissal still stands, the Judge

Advocate General forwards the record together with his recommendations to the Secretary of the Navy.

NOTE 3–The Judge Advocate General may order that a case be forwarded to the Court of Military Appeals for review. The accused has 30 days from the time he is notified of the decision of the Court of Military Review to petition the Court of Military Appeals for a grant of review.

In reviewing courts-martial, the supervisory authority and the Court of Military Review have the same powers as the convening authority, as discussed above. The Court of Military Appeals reviews only matters of "law." In cases involving severe sentences, as described above, the Judge Advocate General exercises no appellate review power except in making recommendations to the President or the Secretary of the Navy where required or in determining if a Navy Court of Military Review decision should be referred to the Court of Military Appeals for review.

### Appellate Defense Counsel

An accused is entitled to have appellate counsel represent him before a Court of Military Review and the Court of Military Appeals, if he so requests. If a case is one which must go to a CMR, a letter signed by the accused must be prefixed to the record of trial stating whether he desires counsel or not. If the accused appeals to COMA, he states in his appeal whether or not he desires counsel. See Section 0121 of the *JAG Manual* for further information on requesting appellate counsel. Also see figure 4-11 for an example of the letter request to be used in indicating the accused's desires in regard to appellate counsel before a CMR.

## ADMINISTRATIVE DUTIES AFTER TRIAL

Your duties after the trial is over will, in large part, be dictated by the type of trial held and the results of the trial. In appropriate cases you will have to prepare court-martial orders (CMO), there will be service record entries to be made, confinement orders to be prepared, or other administrative actions to be taken to implement the sentence of the court. These duties are examined in the following paragraphs.

### COURT-MARTIAL ORDERS

Court-martial orders (CMO's) are issued for every GCM and SPCM, even if the accused was acquitted. CMO's are not issued for summary courts-martial. The main purpose of the CMO is to publish the results of the trial. The results are published to:

- notify the accused of the CA's action;
- notify BUPERS or CMC, as appropriate, of the details of the trial; and
- notify the Naval Clemency and Parole Board of the details of the trial in certain cases.

They are also published so that other personnel may be deterred from committing similar offenses. The CMO is issued by the SA in GCM cases and SPCM cases resulting in an approved BCD. The CA issues the CMO in all other cases.

### Format of CMO

Appendix 15 of the *MCM* sets forth the format to be used in the preparation of CMO's. The following discussion should also aid you in preparing CMO's. The format and content of the CMO should conform to the following:

HEADING.–The CMO number in the heading consists of a consecutive serial number followed by the year. All CMO's issued by your command should be numbered consecutively each calendar year. Example: Special Court-Martial Order No. 15-74. A separate sequence of serial numbers should be used for GCM, SPCM, Supplementary GCM and Supplementary SPCM courts-martial orders. The date of the CMO must be the same as the date of the action of the authority (CA or SA) issuing the CMO.

AUTHORITY.–The authority by which the court was appointed and convened must be shown and a description of the convening order and any modifications thereto must be given. The description states the command and organization of the CA and the serial number and date of the convening order (and any modifications thereto).

ARRAIGNMENT.–The CMO must contain a statement that the accused was "arraigned and tried." If a rehearing or new trial is involved, the arraignment line should contain the following: "*** on a (rehearing) (new trial), the former proceedings having been published in (GCM/SPCM) CMO NO. _____:"

ACCUSED.–The grade, name, social security number, branch of service, and unit of the accused must be shown. If the trial was a joint or common trial, a separate CMO must be issued for each accused.

CHARGES.–All charges and specifications upon which the accused was ARRAIGNED should be set forth at this point. If any information in the specification (or elsewhere in the CMO) is classified or is obscene matter unfit for open publication, the following applies:

- Classified matter–Classified matter must be deleted from all copies of the CMO except the original and certified copies attached to the original CMO and such copies of the record of trial as are required to be forwarded for review, and the plain copy to be retained by the command.
- Obscene matter–Obscene matter must be deleted from all copies of the CMO except the original and certified copies attached to the original CMO and such copies of the record of trial as are required to be forwarded for review; the copies retained in the command files; the copies furnished to the custodian of the accused's personnel records; the copies furnished to the command where the accused is held in custody or to which he is to be transferred; and the copies furnished the commander of the place where the accused is to be confined. All other copies of the CMO should be prepared to eliminate, by the use of asterisks, sufficient data to avoid the necessity of classification and such obscene matter as may be unfit for open publication.

PLEAS.–The pleas of the accused must be set down verbatim as spoken at the trial. However, if no plea was entered as to a charge or specification upon which the accused was arraigned, the reason therefor must be stated instead. Examples:

| | |
|---|---|
| To Specification 2 of Charge I: | Withdrawn by order of the convening authority after arraignment and before the pleas. |
| To the Specification, Charge II: | Dismissed on motion of defense on ground of former jeopardy. |

In such a case, the specification or charge need not be listed under "Findings."

FINDINGS.–The findings of the court are set forth at this point verbatim as spoken at the trial. If no finding was made as to a charge or specification to which a plea had been entered, the reason therefor must be stated instead. Examples:

| | |
|---|---|
| Of Specification 1 of Charge I: | Motion for a finding of not guilty sustained. |
| Of Specification 2 of Charge I: | Withdrawn by order of the convening authority after evidence on the merits had been received because of a failure of available evidence. |

If the accused was acquitted of all charges and specifications, such acquittal is shown together with the date on which the findings were announced.

SENTENCE.–The sentence, as finally adjudged by the court, must be set forth verbatim at this point. In addition, a statement as to the number of previous convictions considered by the court and the date the sentence was adjudged must be included.

ACTION.–The action portion of the CMO contains:

- The CA's action verbatim including the heading, date, and evidence of signature. (Evidence of signature of the CA/SA is shown by "/s/.")
- If the CMO is issued by the SA, his verbatim action follows the action of the CA, including heading, date, and evidence of signature.

AUTHENTICATION.–The signature of the authority issuing the CMO appears at the end of the CMO, or the signature of a subordinate officer designated to sign "By direction." At least two lines of the text of the CMO must appear on the signature page–never the signature section alone. The name, rank, title, and organization of the officer actually signing the CMO must be shown. If the CMO is signed "By direction," such fact must be shown together with the name, rank, title, and organization of the issuing officer (CA or SA).

DISTRIBUTION.–Normally, the following distribution is made: The original CMO must be attached to the original record of trial. A "duplicate" original must be placed in the service record of the accused, unless the court-martial proceedings resulted in acquittal of all charges; disapproval of all findings of guilty; or disapproval of the sentence by the convening authority when no finding has been expressly approved by him. Certified and plain copies of the CMO are then required as follows:

CERTIFIED COPIES

Original Record of Trial–3
Each Copy of Record–1
CO of Accused
    If accused is to be confined in brig or correctional center–2
    If accused is to be confined in a disciplinary command–3
    (These copies should accompany the records of the accused to the place of confinement.)
CHNAVPERS or CMC (as appropriate)–1
Senior Member, Naval Clemency and Parole Board
    (If sentence includes unsuspended punitive discharge or CHL for eight months or more)–1

PLAIN COPIES

Accused–1
Military Judge–1
Trial Counsel–1
Defense Counsel–1
Convening Authority–1
    (If accused was serving in a command other than that of the CA at the time of the offense, a copy must be sent to the command in which he was then serving).
Each appropriate subordinate unit and any other local distribution desired–1 each

See Section 0124 of the *JAG Manual* for further information on distributing copies of the CMO.

SUPPLEMENTARY CMO's.–A supplementary CMO is issued when:

- Higher reviewing authority modifies the findings or sentence as set forth in the initial CMO, or
- Higher reviewing authority designates the place of confinement.

Who issues the supplementary CMO will depend on who took the action which requires a supplementary CMO:

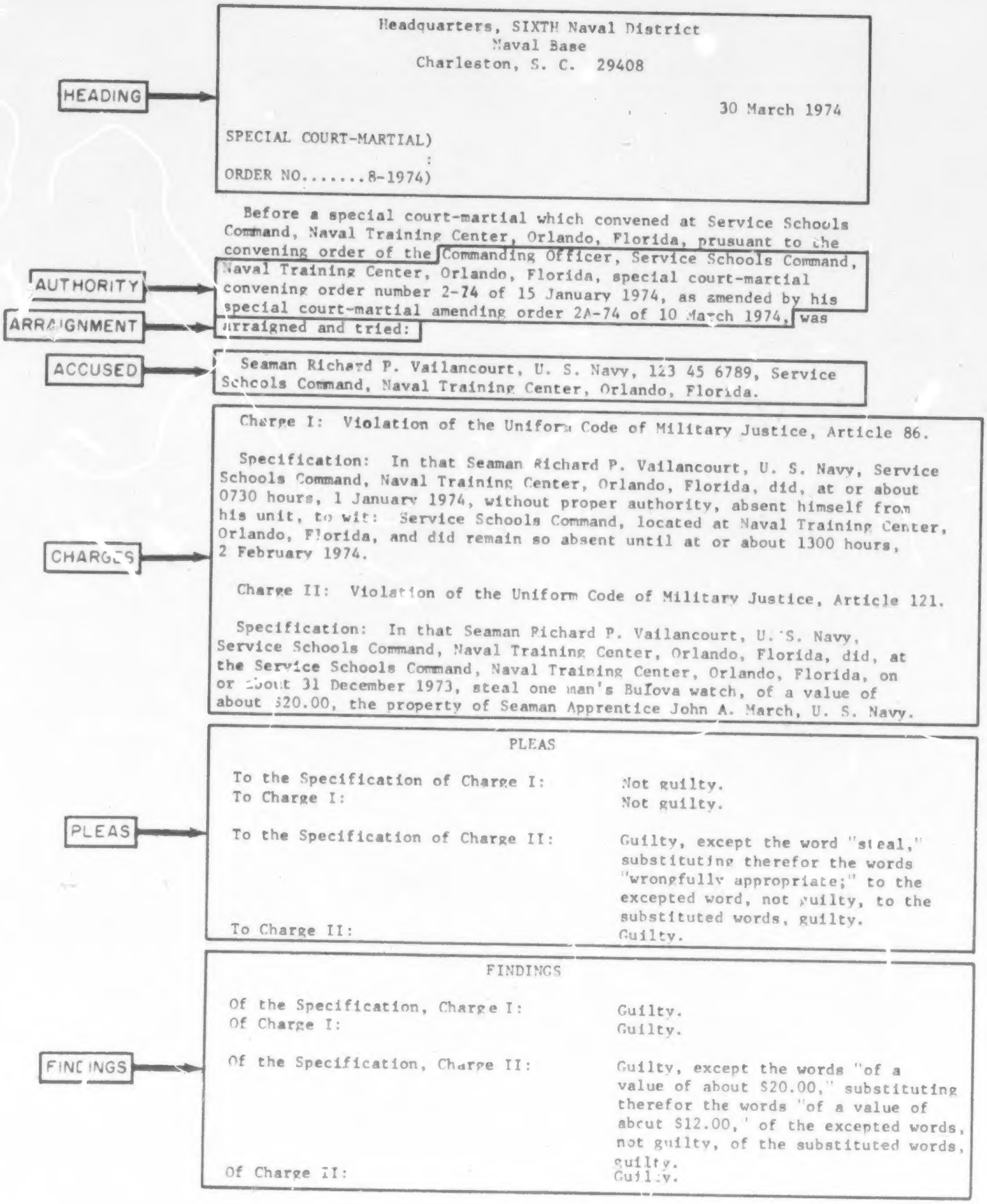
- The Judge Advocate General (by direction of SECNAV) issues the supplementary CMO if SECNAV or the President took the action or if the action was the final action on a new trial.
- SECNAV(JAG), CA or SA of the accused at the time of the action, if the action was taken by a Board of Review or COMA.

The SA or CA issues the supplementary CMO if action was taken by the SA in non-BCD special courts-martial cases. Normally, the SA will direct the CA to issue the supplementary CMO. The CA issues the supplementary CMO when the case has been returned to him with orders to withdraw his previous action and either dismiss the charges or order a rehearing.

Figure 9-3 is an illustration of a CMO showing correct format and content.

## CONFINEMENT AND RELEASE ORDERS

Upon notification from the trial counsel of the results of the trial, the accused's commanding officer must take prompt and appropriate action with respect to the restraint of the person tried. This action, depending on the circumstances, may involve the immediate release of the accused from any restraint, or the


HEADING
AUTHORITY
ARRAIGNMENT
ACCUSED
CHARGES
PLEAS
FINDINGS

Headquarters, SIXTH Naval District
Naval Base
Charleston, S. C. 29408

30 March 1974

SPECIAL COURT-MARTIAL)
:
ORDER NO.......8-1974)

Before a special court-martial which convened at Service Schools Command, Naval Training Center, Orlando, Florida, prusuant to the convening order of the Commanding Officer, Service Schools Command, Naval Training Center, Orlando, Florida, special court-martial convening order number 2-74 of 15 January 1974, as amended by his special court-martial amending order 2A-74 of 10 March 1974, was arraigned and tried:

Seaman Richard P. Vailancourt, U. S. Navy, 123 45 6789, Service Schcols Command, Naval Training Center, Orlando, Florida.

Charge I: Violation of the Uniform Code of Military Justice, Article 86.

Specification: In that Seaman Richard P. Vailancourt, U. S. Navy, Service Schools Command, Naval Training Center, Orlando, Florida, did, at or about 0730 hours, 1 January 1974, without proper authority, absent himself from his unit, to wit: Service Schools Command, located at Naval Training Center, Orlando, Florida, and did remain so absent until at or about 1300 hours, 2 February 1974.

Charge II: Violation of the Uniform Code of Military Justice, Article 121.

Specification: In that Seaman Richard P. Vailancourt, U. S. Navy, Service Schools Command, Naval Training Center, Orlando, Florida, did, at the Service Schools Command, Naval Training Center, Orlando, Florida, on or about 31 December 1973, steal one man's Bulova watch, of a value of about $20.00, the property of Seaman Apprentice John A. March, U. S. Navy.

PLEAS

| | |
|---|---|
| To the Specification of Charge I: | Not guilty. |
| To Charge I: | Not guilty. |
| To the Specification of Charge II: | Guilty, except the word "steal," substituting therefor the words "wrongfully appropriate;" to the excepted word, not guilty, to the substituted words, guilty. |
| To Charge II: | Guilty. |

FINDINGS

| | |
|---|---|
| Of the Specification, Charge I: | Guilty. |
| Of Charge I: | Guilty. |
| Of the Specification, Charge II: | Guilty, except the words "of a value of about $20.00," substituting therefor the words "of a value of about $12.00," of the excepted words, not guilty, of the substituted words, guilty. |
| Of Charge II: | Guilty. |

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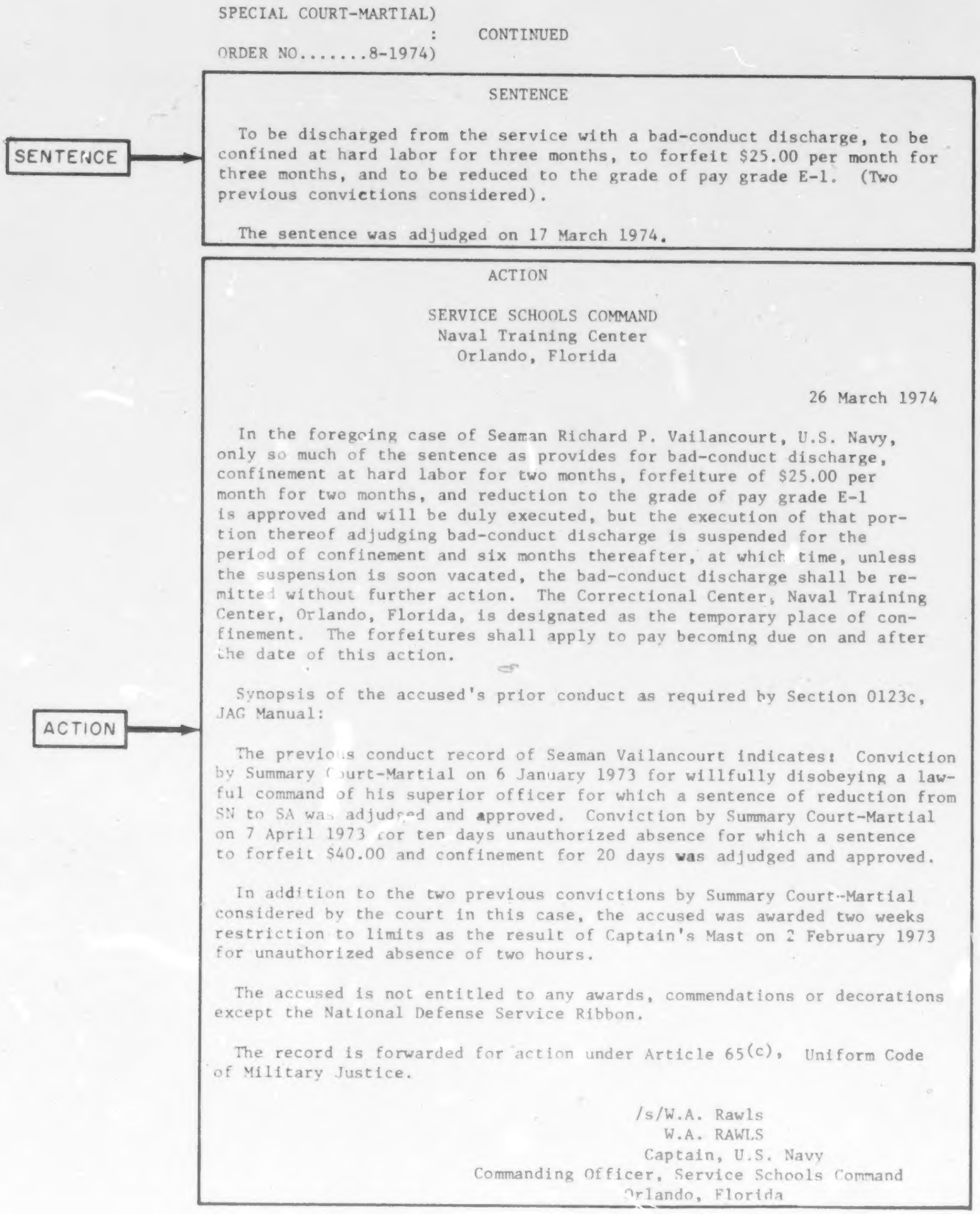
Figure 9-3.—Court-martial order (Page 1).



SENTENCE
ACTION

SPECIAL COURT-MARTIAL)
: CONTINUED
ORDER NO.......8-1974)

SENTENCE

To be discharged from the service with a bad-conduct discharge, to be confined at hard labor for three months, to forfeit $25.00 per month for three months, and to be reduced to the grade of pay grade E-1. (Two previous convictions considered).

The sentence was adjudged on 17 March 1974.

ACTION

SERVICE SCHOOLS COMMAND
Naval Training Center
Orlando, Florida

26 March 1974

In the foregoing case of Seaman Richard P. Vailancourt, U.S. Navy, only so much of the sentence as provides for bad-conduct discharge, confinement at hard labor for two months, forfeiture of $25.00 per month for two months, and reduction to the grade of pay grade E-1 is approved and will be duly executed, but the execution of that portion thereof adjudging bad-conduct discharge is suspended for the period of confinement and six months thereafter, at which time, unless the suspension is soon vacated, the bad-conduct discharge shall be remitted without further action. The Correctional Center, Naval Training Center, Orlando, Florida, is designated as the temporary place of confinement. The forfeitures shall apply to pay becoming due on and after the date of this action.

Synopsis of the accused's prior conduct as required by Section 0123c, JAG Manual:

The previous conduct record of Seaman Vailancourt indicates: Conviction by Summary Court-Martial on 6 January 1973 for willfully disobeying a lawful command of his superior officer for which a sentence of reduction from SN to SA was adjudged and approved. Conviction by Summary Court-Martial on 7 April 1973 for ten days unauthorized absence for which a sentence to forfeit $40.00 and confinement for 20 days was adjudged and approved.

In addition to the two previous convictions by Summary Court-Martial considered by the court in this case, the accused was awarded two weeks restriction to limits as the result of Captain's Mast on 2 February 1973 for unauthorized absence of two hours.

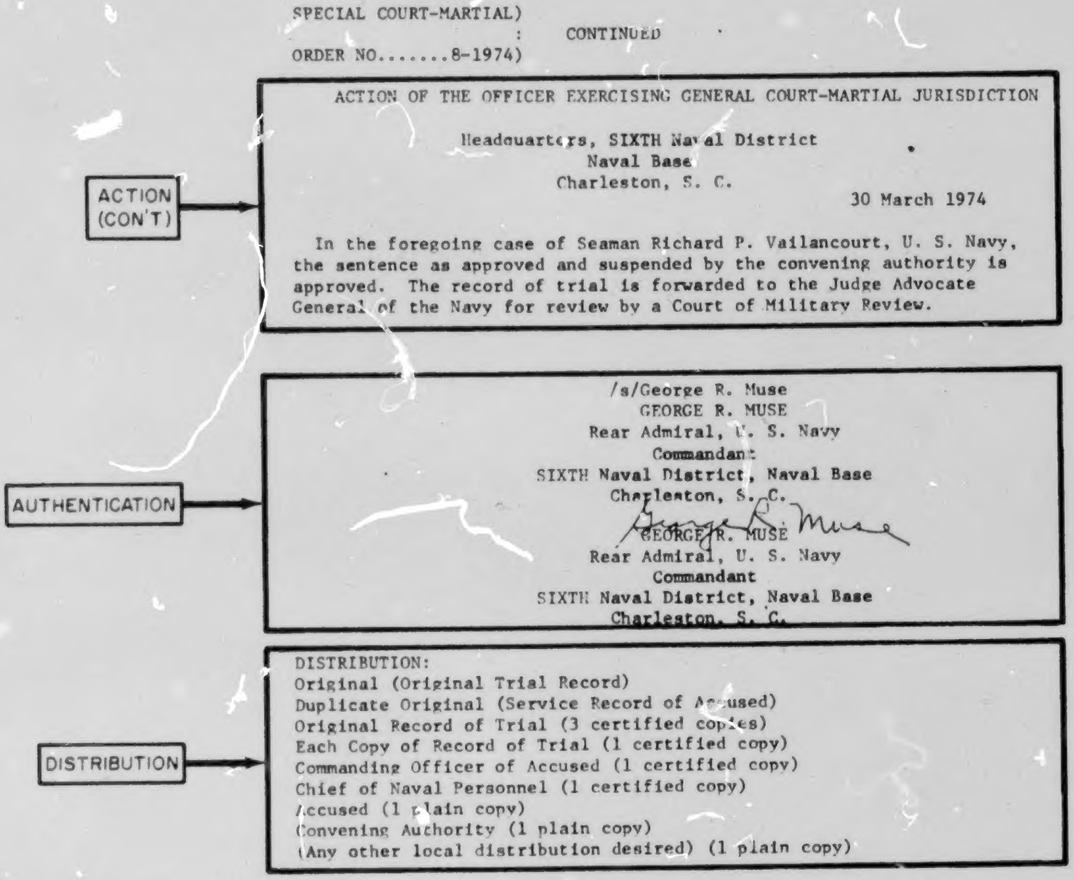
The accused is not entitled to any awards, commendations or decorations except the National Defense Service Ribbon.

The record is forwarded for action under Article 65(c), Uniform Code of Military Justice.

/s/W.A. Rawls
W.A. RAWLS
Captain, U.S. Navy
Commanding Officer, Service Schools Command
Orlando, Florida

192.51.2

Figure 9-3.–Court-martial order–(Continued) (Page 2).


ACTION (CON'T)
AUTHENTICATION
DISTRIBUTION

SPECIAL COURT-MARTIAL)
: CONTINUED
ORDER NO.......8-1974)

ACTION OF THE OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION

Headquarters, SIXTH Naval District
Naval Base
Charleston, S. C.
30 March 1974

In the foregoing case of Seaman Richard P. Vailancourt, U. S. Navy, the sentence as approved and suspended by the convening authority is approved. The record of trial is forwarded to the Judge Advocate General of the Navy for review by a Court of Military Review.

/s/George R. Muse
GEORGE R. MUSE
Rear Admiral, U. S. Navy
Commandant
SIXTH Naval District, Naval Base
Charleston, S. C.

George R. Muse
GEORGE R. MUSE
Rear Admiral, U. S. Navy
Commandant
SIXTH Naval District, Naval Base
Charleston, S. C.

DISTRIBUTION:
Original (Original Trial Record)
Duplicate Original (Service Record of Accused)
Original Record of Trial (3 certified copies)
Each Copy of Record of Trial (1 certified copy)
Commanding Officer of Accused (1 certified copy)
Chief of Naval Personnel (1 certified copy)
Accused (1 plain copy)
Convening Authority (1 plain copy)
(Any other local distribution desired) (1 plain copy)

192.51.3

Figure 9-3.—Court-martial order—(Continued) (Page 3).

imposition of any necessary restraint pending final action on the case.

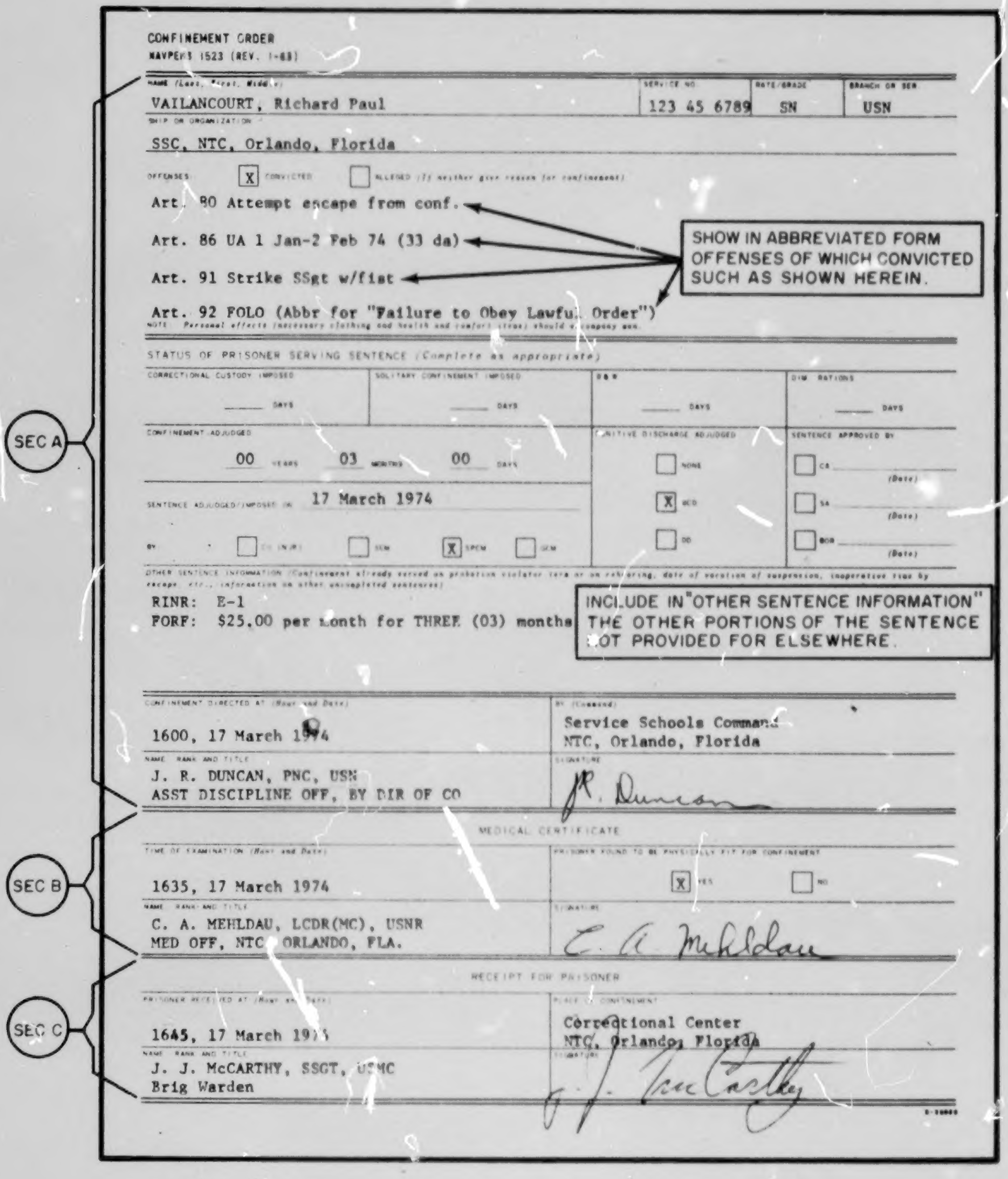
Upon completion of the trial, and provided of course that the accused is sentenced to a term of confinement, the normal course of action is to place the accused under guard and have him taken to the place of confinement. However, a confinement order must be prepared and must accompany the accused to the correctional facility.

### Confinement Order

The Confinement Order (NAVPERS 1523) is the document used to satisfy the requirements of the *MCM* for a written order of confinement. Additionally, as a matter of policy, no member of the Navy may be confined without a written confinement order, signed by an officer or, if authorized in writing by his CO, a senior petty officer (E-7, E-8, or E-9).

In cases tried in Navy Law Centers, the accused is normally returned to his parent command, under guard, where the confinement order and other required paperwork is completed in the administrative or discipline office, as is normally done when the case is tried by the accused's command. Only Section A, as shown in figure 9-4, need be completed at this time.

If the accused was confined prior to trial, a new confinement order showing the change of



CONFINEMENT ORDER
NAVPERS 1523 (REV. 1-68)

| | | | |
|---|---|---|---|
| NAME (Last, First, Middle) | SERVICE NO. | RATE/GRADE | BRANCH OR SER |
| VAILANCOURT, Richard Paul | 123 45 6789 | SN | USN |

SHIP OR ORGANIZATION
SSC, NTC, Orlando, Florida

OFFENSES ☒ CONVICTED ☐ ALLEGED (If neither give reason for confinement)

Art. 80 Attempt escape from conf.
Art. 86 UA 1 Jan-2 Feb 74 (33 da)
Art. 91 Strike SSgt w/fist
Art. 92 FOLO (Abbr for "Failure to Obey Lawful Order")

NOTE: Personal effects (necessary clothing and health and comfort items) should accompany man.

SHOW IN ABBREVIATED FORM OFFENSES OF WHICH CONVICTED SUCH AS SHOWN HEREIN.

STATUS OF PRISONER SERVING SENTENCE (Complete as appropriate)

| | | | |
|---|---|---|---|
| CORRECTIONAL CUSTODY IMPOSED<br>____ DAYS | SOLITARY CONFINEMENT IMPOSED<br>____ DAYS | B&W<br>____ DAYS | DIM RATIONS<br>____ DAYS |

CONFINEMENT ADJUDGED 00 YEARS 03 MONTHS 00 DAYS
SENTENCE ADJUDGED/IMPOSED ON 17 March 1974
BY ☐ CO (NJP) ☐ SCM ☒ SPCM ☐ GCM
PUNITIVE DISCHARGE ADJUDGED ☐ NONE ☒ BCD ☐ DD
SENTENCE APPROVED BY ☐ CA ____ (Date) ☐ SA ____ (Date) ☐ BOR ____ (Date)

OTHER SENTENCE INFORMATION (Confinement already served on probation violator term or on rehearing, date of vacation of suspension, inoperative time by escape, etc., information on other uncompleted sentences)

RINR: E-1
FORF: $25.00 per month for THREE (03) months

INCLUDE IN "OTHER SENTENCE INFORMATION" THE OTHER PORTIONS OF THE SENTENCE NOT PROVIDED FOR ELSEWHERE.

| | |
|---|---|
| CONFINEMENT DIRECTED AT (Hour and Date)<br>1600, 17 March 1974 | BY (Command)<br>Service Schools Command<br>NTC, Orlando, Florida |
| NAME, RANK AND TITLE<br>J. R. DUNCAN, PNC, USN<br>ASST DISCIPLINE OFF, BY DIR OF CO | SIGNATURE<br>JR. Duncan |

MEDICAL CERTIFICATE

| | |
|---|---|
| TIME OF EXAMINATION (Hour and Date)<br>1635, 17 March 1974 | PRISONER FOUND TO BE PHYSICALLY FIT FOR CONFINEMENT<br>☒ YES ☐ NO |
| NAME, RANK AND TITLE<br>C. A. MEHLDAU, LCDR(MC), USNR<br>MED OFF, NTC, ORLANDO, FLA. | SIGNATURE<br>C. A. Mehldau |

RECEIPT FOR PRISONER

| | |
|---|---|
| PRISONER RECEIVED AT (Hour and Date)<br>1645, 17 March 1974 | PLACE OF CONFINEMENT<br>Correctional Center<br>NTC, Orlando, Florida |
| NAME, RANK AND TITLE<br>J. J. McCARTHY, SSGT, USMC<br>Brig Warden | SIGNATURE<br>J. J. McCarthy |

192.52

Figure 9-4.–Confinement order.

status of the prisoner must be furnished to the correctional facility.

Prior to confinement the accused must be physically examined. Section B of the confinement order shown in figure 9-4 is then completed by the examining physician.

Section C of the confinement order serves as a receipt for the prisoner. Therefore, you should prepare sufficient copies of the confinement order to satisfy local correctional facility requirements plus extra copies for the command files showing that the prisoner has been properly receipted for.

Typically, the following steps are followed in the confinement procedure after the court has adjourned:

(1) Court adjourns after announcing sentence.

(2) The accused is returned, under guard, to parent or other responsible command where confinement order and other required paperwork is completed.

(3) Accused is escorted to medical facility for physical examination.

(4) Member is delivered to confinement facility for incarceration. Prisoner is receipted for upon delivery.

For further information concerning confinement orders and procedures see Chapter 3 of SECNAVINST 1640.9 series; Subj: *Department of the Navy Corrections Manual.* The confinement order has been revised and reissued under a new NAVPERS number (NAVPERS 1640/4) and is in the supply system. However, the new revision will not be issued until present stocks of the old issue are exhausted.

**Release Order**

The proper authority to release personnel from confinement in military confinement facilities is the commanding officer of the facility. Once a prisoner is confined, he passes beyond the control and power of release of the officer who initially ordered him confined, unless that officer is the CO of the confinement facility. Normally, the CO of the facility will authorize final release of a prisoner:

- When requested by the prisoner's CO.
- When the reason for his detention or confinement no longer exists, e.g., sentence completed.
- For transfer to another correctional center, to a medical facility, or when directed by proper authority, to another authority or jurisdiction.
- Upon expiration of the term of confinement adjusted to reflect clemency or other action and further reduced by good conduct time earned.
- When pretrial confinement or detention exceeds 30 days and the confinement has not been approved in writing by the OEGCMJ over the command which ordered the investigation of alleged offenses.

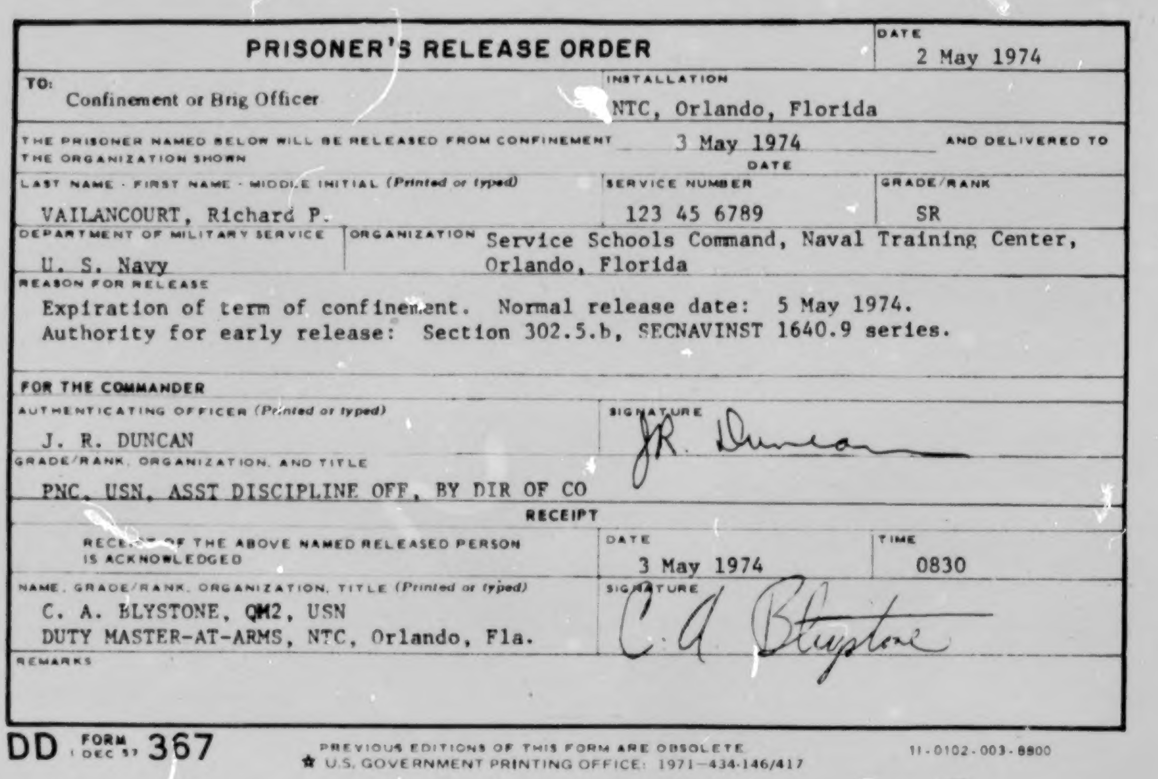
A Prisoner Release Order (DD Form 367) must be presented to the Corrections Officer to obtain the final release of a prisoner. When completed, this form is a receipt for the prisoner. See figure 9-5.

Again, the release order is normally prepared by the administrative or discipline office of the prisoner's parent command. Recall that the authority for release rests with the commanding officer of the correctional facility.

The normal release date is the day confinement is completed. It is computed by correctional center personnel in accordance with the provisions of Chapter 10 of the *Corrections Manual.* Therefore, you must maintain liaison with the correctional facility to obtain release dates for personnel of your command who are serving confinement so that the release order may be prepared and forwarded to the Corrections Officer on the prisoner's scheduled release date.

When a prisoner's release date falls on a Saturday, Sunday or national holiday, he should be released on the workday immediately preceding such nonworkday(s). The authority for such early release is contained in Section 302.5.b of the *Corrections Manual* and this authority must be cited in the release order. However, a prisoner serving confinement on bread and water or diminished rations must serve the entire period imposed unless remitted or suspended. These prisoners must not be released until the complete sentence is served and may be released on weekends or holidays as applicable.

196



**PRISONER'S RELEASE ORDER**

DATE
2 May 1974

TO:
Confinement or Brig Officer

INSTALLATION
NTC, Orlando, Florida

THE PRISONER NAMED BELOW WILL BE RELEASED FROM CONFINEMENT 3 May 1974 (DATE) AND DELIVERED TO THE ORGANIZATION SHOWN

| LAST NAME - FIRST NAME - MIDDLE INITIAL *(Printed or typed)* | SERVICE NUMBER | GRADE/RANK |
|---|---|---|
| VAILANCOURT, Richard P. | 123 45 6789 | SR |

| DEPARTMENT OF MILITARY SERVICE | ORGANIZATION |
|---|---|
| U. S. Navy | Service Schools Command, Naval Training Center, Orlando, Florida |

REASON FOR RELEASE
Expiration of term of confinement. Normal release date: 5 May 1974.
Authority for early release: Section 302.5.b, SECNAVINST 1640.9 series.

FOR THE COMMANDER

| AUTHENTICATING OFFICER *(Printed or typed)* | SIGNATURE |
|---|---|
| J. R. DUNCAN | JR. Duncan |

GRADE/RANK, ORGANIZATION, AND TITLE
PNC, USN, ASST DISCIPLINE OFF, BY DIR OF CO

RECEIPT

| RECEIPT OF THE ABOVE NAMED RELEASED PERSON IS ACKNOWLEDGED | DATE | TIME |
|---|---|---|
| | 3 May 1974 | 0830 |

| NAME, GRADE/RANK, ORGANIZATION, TITLE *(Printed or typed)* | SIGNATURE |
|---|---|
| C. A. BLYSTONE, QM2, USN<br>DUTY MASTER-AT-ARMS, NTC, Orlando, Fla. | C A Blystone |

REMARKS

DD FORM 1 DEC 57 367

PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE
☆ U.S. GOVERNMENT PRINTING OFFICE: 1971—434-146/417

11-0102-003-8800

192.53

Figure 9-5.—Release Order.

## SERVICE RECORD ENTRIES

When an enlisted member is tried and convicted by court-martial, and a guilty finding is approved by the convening authority, entries in the member's service record must be made setting forth the details of the trial. The Court Memorandum, NAVPERS 1070/607, Page 7 of the enlisted service record, must be used to record the court-martial action. In addition, a memorandum entry on Page 9 of the service record should be made in accordance with the provisions of the *BUPERS Manual.*

### Preparation of NAVPERS 1070/607, Page 7

Before you begin preparation of the Court Memorandum, it is imperative that you thoroughly understand the general instructions for preparing optical character recognition (OCR) documents. These instructions are for your guidance in handling, preparing, and mailing OCR documents and are contained in Appendix E to the *Navy Pay and Personnel Procedures Manual* (PAYPERSMAN) (NAVSO P-3050). By following these instructions explicitly, you will save yourself, as well as everyone else concerned, much extra work by avoiding the necessity of returning improperly prepared or processed documents. That said, let's now proceed to the actual preparation of the Court Memorandum.

The form itself is a 4-part carbon-interleaved form. It is used to report:

(1) all court-martial action where a guilty finding is made by the court and approved by the convening authority;

(2) supervisory or other higher authority action;

(3) administrative actions, such as contempt of court charges; and

(4) restoration of rate upon release from confinement.

It also has uses in connection with reporting nonjudicial punishments which are covered in Chapter 6 of this text.

The Court Memorandum should not be used to report an administrative reduction in rate for incompetency or readvancement to a pay grade which was reduced by NJP (and readvancement did not result from an appeal).

By referring to the table shown as figure 9-6 and the appropriate figures as listed in column E of the table, you should be able to prepare the Court Memorandum properly in any case.

### Page 9 Entries

Memorandum entries on Page 9 of the service record to record courts-martial convictions should be made in the manner provided for in *BUPERSMAN* 5030360.

## DISPOSITION OF TRIAL RECORDS

Records of all trials by court-martial in the naval service are under the supervision of the Judge Advocate General. The Judge Advocate General has promulgated instructions concerning the filing and disposition of court-martial records in Chapter I of the *JAG Manual*.

After completion of review in the field, all records of trial requiring review by the CMR must be forwarded to the Navy Appellate Review Activity (NAVARA), Office of the Judge Advocate General, Washington Navy Yard, Washington, D.C. 20374. GCM cases which do not require review by the CMR under Article 66(b), UCMJ, are also forwarded to NAVARA.

### Filing of Courts-Martial Records

All GCM records are filed in the Office of the Judge Advocate General.

SPCM records of trial which (1) involve an officer accused or (2) have been acted upon by the CMR, including those cases which have been returned to the OEGCMJ for further action, are filed in the Office of the Judge Advocate General after completion of final action.

All other SPCM's and SCM's must be filed as indicated below:

SHORE ACTIVITIES.–Officers having supervisory authority over shore activities must retain original records for a period of two years after final action on the case has been taken. After this two year retention period, the original records of proceedings must be transferred to the National Personnel Records Center, GSA (Military Personnel Records), 9700 Page Boulevard, St. Louis, Missouri 63132.

FLEET ACTIVITIES.–Officers having supervisory authority who are in command of fleet activities, including Fleet Air Wings and Fleet Marine Forces, must retain original records of proceedings for a period of three months. At the termination of this three month retention period, the original records of proceedings must be forwarded to the National Personnel Records Center in St. Louis, Missouri (address as shown above).

Original records of proceedings held by the Judge Advocate General must be retained permanently. They are transferred periodically to the Federal Records Center in Alexandria, Virginia.

Copies of records of proceedings maintained by the activities concerned where the original records have been forwarded to JAG or are held by the SA should be retained for two years after final action on the records has been taken. Extra or information copies may be destroyed when they have served their purpose.

## CMR DECISIONS

When the Judge Advocate General elects not to certify a case to COMA (see paragraph 100c, *MCM*), a "promulgation package" is prepared in the office of the JAG and is forwarded to the OEGCMJ over the command to which the accused is attached. The promulgation package includes:

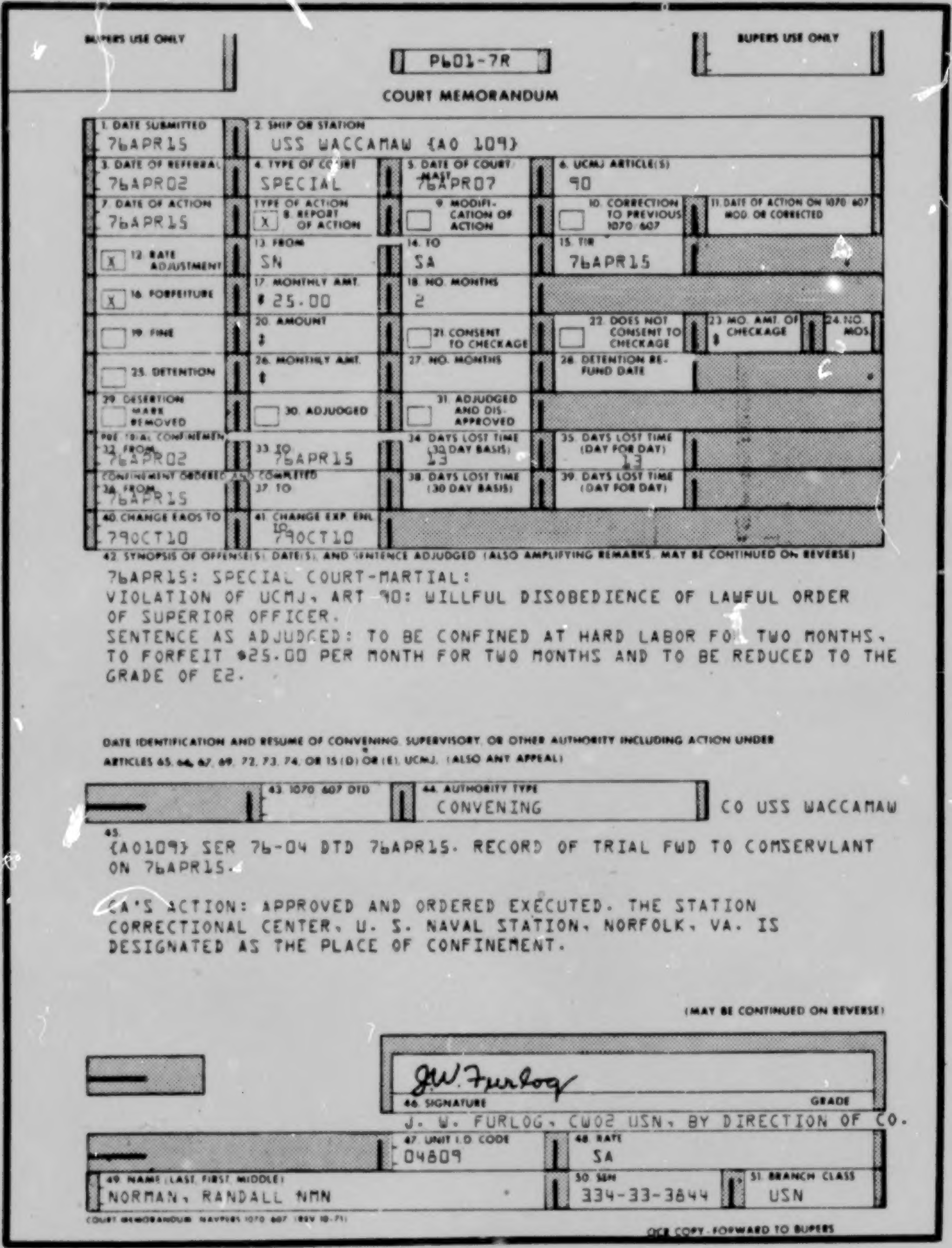
- copies of the CMR's decision;

| (A) | (B) | (C) | (D) | (E) |
|---|---|---|---|---|
| If an enlisted member is | and the form reports | and | the admin office will prepare the NAVPERS 1070/607 | as shown in |
| sentenced to reduction in pay grade/ loss of pay | court-martial action | | upon receipt of convening authority's action | Figure 9-7 |
| | | higher review is required before sentence is effective (Note 1) | | Figure 9-8 |
| | supervisory action | | upon receipt of supervisory authority's action | Figure 9-9 |
| | reviewing authority action | | upon receipt of reviewing authority's action | Figure 9-10 |
| sentenced to fine | court-martial action | member consents to checkage from his current pay | upon receipt of convening authority's action | Figure 9-11 |
| | | member elects to pay the fine in cash | | Figure 9-12 |
| sentenced to forfeiture of pay | | | | Figure 9-7 |
| released from pretrial confinement | | court-martial action includes a finding of guilty (Note 2) | | |
| sentenced to confinement | | | | Figures 9-7/9-8 |
| released from confinement | | confinement was imposed by court martial sentence | | Figure 9-13 |
| found guilty of desertion | court-martial action | | | Figure 9-14 |
| found not guilty of desertion | an adjustment to remove the mark of desertion | | | Figure 9-8 |
| having an administrative error corrected | adjustment of lost time reported | | upon discovery of the error | Figure 9-15 |
| having a loss of rate or pay restored | an adjustment to court-martial sentence | | upon receipt of supervisory or higher authority's action | Figure 9-16 |
| having a loss of pay stopped on a specific date | | | | Figure 9-17 |
| found guilty of desertion | | the finding of guilty is revoked | | Figure 9-18 |

NOTES: (1) See DODPM, Table 7-5-1, for appellate review requirements.
(2) If court-martial finds the member not guilty, or if the member is acquitted of charges, do not prepare NAVPERS 1070/607.

192.54

Figure 9-6.–Preparation of NAVPERS 1070/607.



BUPERS USE ONLY

P601-7R

BUPERS USE ONLY

**COURT MEMORANDUM**

| | | | | | |
|---|---|---|---|---|---|
| 1. DATE SUBMITTED<br>76APR15 | 2. SHIP OR STATION<br>USS WACCAMAW {AO 109} | | | | |
| 3. DATE OF REFERRAL<br>76APR02 | 4. TYPE OF COURT<br>SPECIAL | 5. DATE OF COURT/MAST<br>76APR07 | 6. UCMJ ARTICLE(S)<br>90 | | |
| 7. DATE OF ACTION<br>76APR15 | TYPE OF ACTION<br>☒ 8. REPORT OF ACTION | ☐ 9. MODIFICATION OF ACTION | ☐ 10. CORRECTION TO PREVIOUS 1070/607 | 11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED | |
| ☒ 12. RATE ADJUSTMENT | 13. FROM<br>SN | 14. TO<br>SA | 15. TIR<br>76APR15 | | |
| ☒ 16. FORFEITURE | 17. MONTHLY AMT.<br>$25.00 | 18. NO. MONTHS<br>2 | | | |
| ☐ 19. FINE | 20. AMOUNT<br>$ | ☐ 21. CONSENT TO CHECKAGE | ☐ 22. DOES NOT CONSENT TO CHECKAGE | 23. MO. AMT. OF CHECKAGE<br>$ | 24. NO. MOS. |
| ☐ 25. DETENTION | 26. MONTHLY AMT.<br>$ | 27. NO. MONTHS | 28. DETENTION REFUND DATE | | |
| 29. DESERTION MARK REMOVED ☐ | ☐ 30. ADJUDGED | ☐ 31. ADJUDGED AND DISAPPROVED | | | |
| PRE-TRIAL CONFINEMENT<br>32. FROM<br>76APR02 | 33. TO<br>76APR15 | 34. DAYS LOST TIME (30 DAY BASIS)<br>13 | 35. DAYS LOST TIME (DAY FOR DAY)<br>13 | | |
| CONFINEMENT ORDERED AND COMPLETED<br>36. FROM<br>76APR15 | 37. TO | 38. DAYS LOST TIME (30 DAY BASIS) | 39. DAYS LOST TIME (DAY FOR DAY) | | |
| 40. CHANGE EAOS TO<br>79OCT10 | 41. CHANGE EXP. ENL. TO<br>79OCT10 | | | | |

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

76APR15: SPECIAL COURT-MARTIAL:
VIOLATION OF UCMJ, ART 90: WILLFUL DISOBEDIENCE OF LAWFUL ORDER OF SUPERIOR OFFICER.
SENTENCE AS ADJUDGED: TO BE CONFINED AT HARD LABOR FOR TWO MONTHS, TO FORFEIT $25.00 PER MONTH FOR TWO MONTHS AND TO BE REDUCED TO THE GRADE OF E2.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15(D) OR (E), UCMJ. (ALSO ANY APPEAL)

43. 1070/607 DTD

44. AUTHORITY TYPE: CONVENING

CO USS WACCAMAW

45. {AO109} SER 76-04 DTD 76APR15. RECORD OF TRIAL FWD TO COMSERVLANT ON 76APR15.

CA'S ACTION: APPROVED AND ORDERED EXECUTED. THE STATION CORRECTIONAL CENTER, U. S. NAVAL STATION, NORFOLK, VA. IS DESIGNATED AS THE PLACE OF CONFINEMENT.

(MAY BE CONTINUED ON REVERSE)

J.W. Furlog

46. SIGNATURE GRADE

J. W. FURLOG, CWO2 USN, BY DIRECTION OF CO.

47. UNIT I.D. CODE: 04809

48. RATE: SA

49. NAME (LAST, FIRST, MIDDLE): NORMAN, RANDALL NMN

50. SSN: 334-33-3844

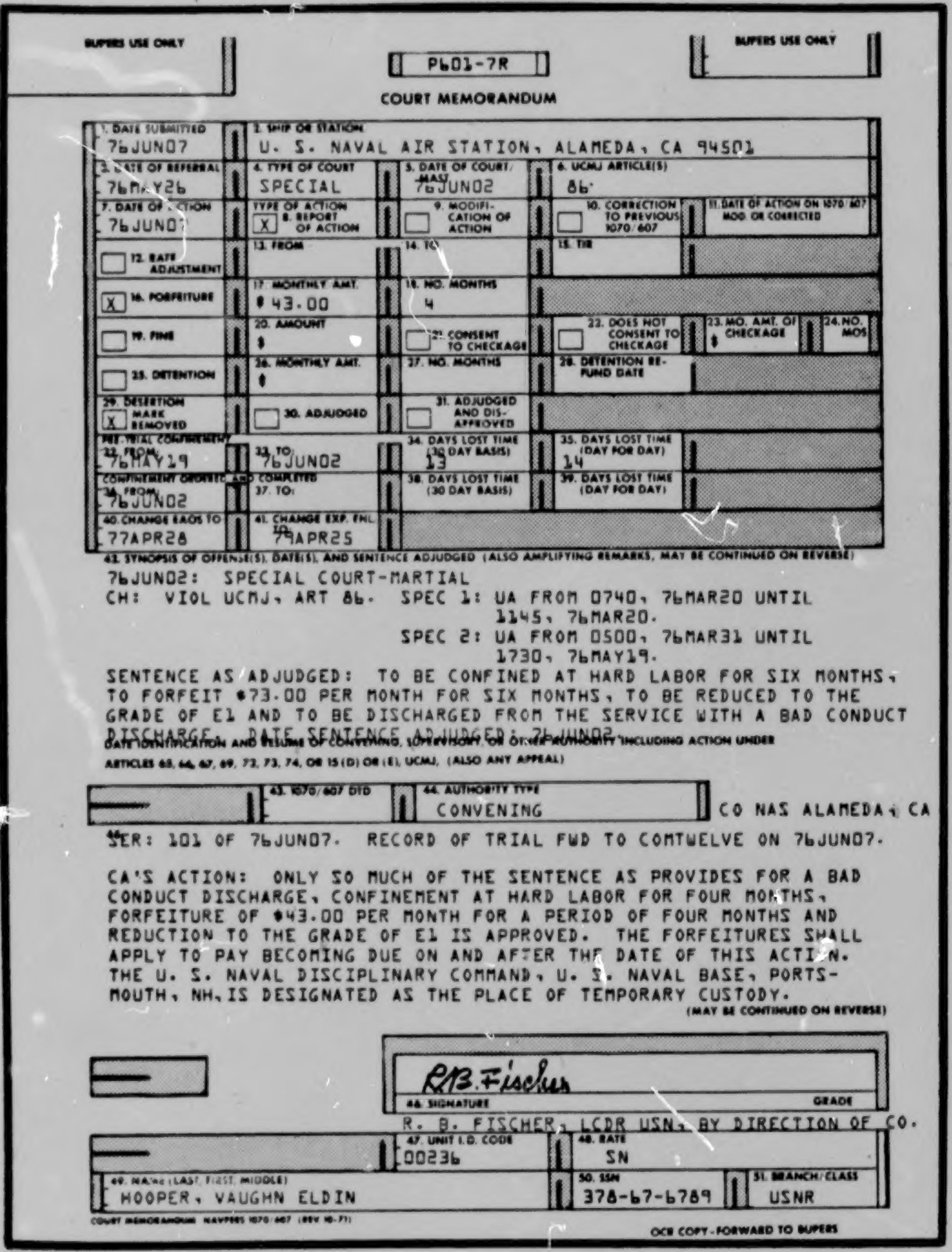
51. BRANCH CLASS: USN

COURT MEMORANDUM NAVPERS 1070/607 (REV 10-71)

OCR COPY - FORWARD TO BUPERS

192.55

Figure 9-7.—Reduction, forfeiture—no review required.



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P601-7R

BUPERS USE ONLY

COURT MEMORANDUM

1. DATE SUBMITTED: 76JUN07
2. SHIP OR STATION: U. S. NAVAL AIR STATION, ALAMEDA, CA 94501
3. DATE OF REFERRAL: 76MAY26
4. TYPE OF COURT: SPECIAL
5. DATE OF COURT/MAST: 76JUN02
6. UCMJ ARTICLE(S): 86
7. DATE OF ACTION: 76JUN07
TYPE OF ACTION: ☒ 8. REPORT OF ACTION
☐ 9. MODIFICATION OF ACTION
☐ 10. CORRECTION TO PREVIOUS 1070/607
11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED:
☐ 12. RATE ADJUSTMENT
13. FROM:
14. TO:
15. TIR:
☒ 16. FORFEITURE
17. MONTHLY AMT.: $ 43.00
18. NO. MONTHS: 4
☐ 19. FINE
20. AMOUNT: $
☐ 21. CONSENT TO CHECKAGE
☐ 22. DOES NOT CONSENT TO CHECKAGE
23. MO. AMT. OF CHECKAGE: $
24. NO. MOS:
☐ 25. DETENTION
26. MONTHLY AMT.: $
27. NO. MONTHS:
28. DETENTION REFUND DATE:
29. DESERTION ☒ MARK REMOVED
☐ 30. ADJUDGED
☐ 31. ADJUDGED AND DISAPPROVED
PRE-TRIAL CONFINEMENT
32. FROM: 76MAY19
33. TO: 76JUN02
34. DAYS LOST TIME (30 DAY BASIS): 13
35. DAYS LOST TIME (DAY FOR DAY): 14
CONFINEMENT ORDERED AND COMPLETED
36. FROM: 76JUN02
37. TO:
38. DAYS LOST TIME (30 DAY BASIS):
39. DAYS LOST TIME (DAY FOR DAY):
40. CHANGE EAOS TO: 77APR28
41. CHANGE EXP. ENL. TO: 79APR25

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

```
76JUN02:  SPECIAL COURT-MARTIAL
CH:  VIOL UCMJ, ART 86.  SPEC 1: UA FROM 0740, 76MAR20 UNTIL
                                 1145, 76MAR20.
                         SPEC 2: UA FROM 0500, 76MAR31 UNTIL
                                 1730, 76MAY19.
SENTENCE AS ADJUDGED:  TO BE CONFINED AT HARD LABOR FOR SIX MONTHS,
TO FORFEIT $73.00 PER MONTH FOR SIX MONTHS, TO BE REDUCED TO THE
GRADE OF E1 AND TO BE DISCHARGED FROM THE SERVICE WITH A BAD CONDUCT
DISCHARGE.  DATE SENTENCE ADJUDGED: 76JUN02.
```

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15(D) OR (E), UCMJ, (ALSO ANY APPEAL)

43. 1070/607 DTD:
44. AUTHORITY TYPE: CONVENING
CO NAS ALAMEDA, CA

```
SER: 101 OF 76JUN07.  RECORD OF TRIAL FWD TO COMTWELVE ON 76JUN07.

CA'S ACTION:  ONLY SO MUCH OF THE SENTENCE AS PROVIDES FOR A BAD
CONDUCT DISCHARGE, CONFINEMENT AT HARD LABOR FOR FOUR MONTHS,
FORFEITURE OF $43.00 PER MONTH FOR A PERIOD OF FOUR MONTHS AND
REDUCTION TO THE GRADE OF E1 IS APPROVED.  THE FORFEITURES SHALL
APPLY TO PAY BECOMING DUE ON AND AFTER THE DATE OF THIS ACTION.
THE U. S. NAVAL DISCIPLINARY COMMAND, U. S. NAVAL BASE, PORTS-
MOUTH, NH, IS DESIGNATED AS THE PLACE OF TEMPORARY CUSTODY.
```

(MAY BE CONTINUED ON REVERSE)

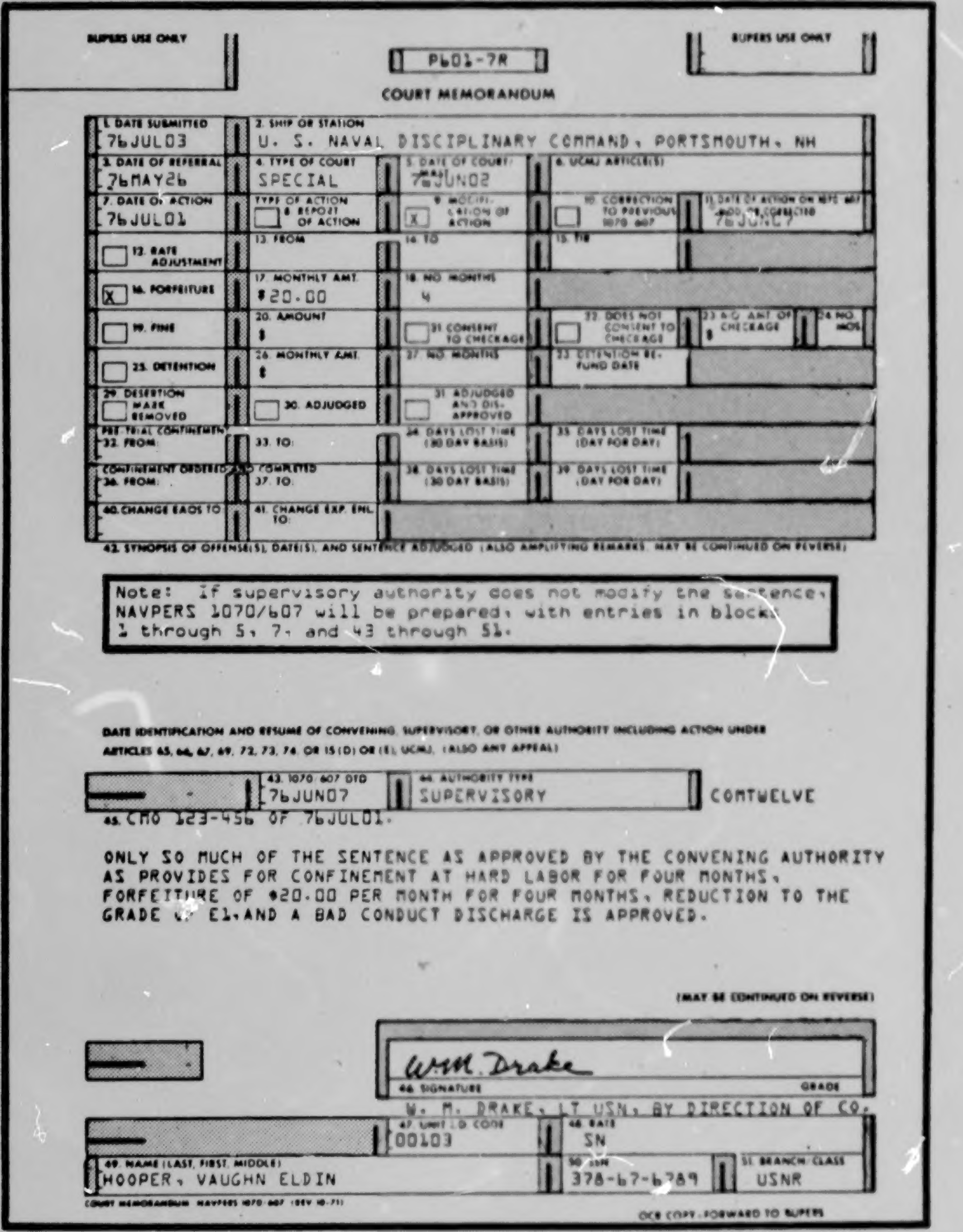
RB.Fischer
46. SIGNATURE
GRADE
R. B. FISCHER, LCDR USN, BY DIRECTION OF CO.
47. UNIT I.D. CODE: 00236
48. RATE: SN
49. NAME (LAST, FIRST, MIDDLE): HOOPER, VAUGHN ELDIN
50. SSN: 378-67-6789
51. BRANCH/CLASS: USNR

COURT MEMORANDUM NAVPERS 1070/607 (REV 10-71)

OCR COPY-FORWARD TO BUPERS

192.56

Figure 9-8.—Reduction, forfeiture—review required.



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P601-7R

BUPERS USE ONLY

COURT MEMORANDUM

| | | | | | |
|---|---|---|---|---|---|
| 1. DATE SUBMITTED<br>76JUL03 | 2. SHIP OR STATION<br>U. S. NAVAL DISCIPLINARY COMMAND, PORTSMOUTH, NH | | | | |
| 3. DATE OF REFERRAL<br>76MAY26 | 4. TYPE OF COURT<br>SPECIAL | 5. DATE OF COURT/<br>76JUN02 | 6. UCMJ ARTICLE(S) | | |
| 7. DATE OF ACTION<br>76JUL01 | TYPE OF ACTION<br>☐ 8. REPORT OF ACTION | ☒ 9. MODIFICATION OF ACTION | ☐ 10. CORRECTION TO PREVIOUS 1070/607 | 11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED<br>76JUN07 | |
| ☐ 12. RATE ADJUSTMENT | 13. FROM | 14. TO | 15. TIR | | |
| ☒ 16. FORFEITURE | 17. MONTHLY AMT.<br>$20.00 | 18. NO. MONTHS<br>4 | | | |
| ☐ 19. FINE | 20. AMOUNT<br>$ | ☐ 21 CONSENT TO CHECKAGE | ☐ 22. DOES NOT CONSENT TO CHECKAGE | 23. A.O. AMT. OF CHECKAGE<br>$ | 24 NO. MOS. |
| ☐ 25. DETENTION | 26. MONTHLY AMT.<br>$ | 27. NO. MONTHS | 28. DETENTION REFUND DATE | | |
| 29. DESERTION<br>☐ MARK REMOVED | ☐ 30. ADJUDGED | ☐ 31. ADJUDGED AND DISAPPROVED | | | |
| PRE-TRIAL CONFINEMENT<br>32. FROM: | 33. TO: | 34. DAYS LOST TIME (30 DAY BASIS) | 35. DAYS LOST TIME (DAY FOR DAY) | | |
| CONFINEMENT ORDERED AND COMPLETED<br>36. FROM: | 37. TO: | 38. DAYS LOST TIME (30 DAY BASIS) | 39. DAYS LOST TIME (DAY FOR DAY) | | |
| 40. CHANGE EAOS TO | 41. CHANGE EXP. ENL. TO: | | | | |

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS. MAY BE CONTINUED ON REVERSE)

Note: If supervisory authority does not modify the sentence, NAVPERS 1070/607 will be prepared, with entries in blocks 1 through 5, 7, and 43 through 51.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15(D) OR (E), UCMJ. (ALSO ANY APPEAL)

43. 1070/607 DTD 76JUN07

44. AUTHORITY TYPE SUPERVISORY

COMTWELVE

45. CMO 123-456 OF 76JUL01.

ONLY SO MUCH OF THE SENTENCE AS APPROVED BY THE CONVENING AUTHORITY AS PROVIDES FOR CONFINEMENT AT HARD LABOR FOR FOUR MONTHS, FORFEITURE OF $20.00 PER MONTH FOR FOUR MONTHS, REDUCTION TO THE GRADE OF E1, AND A BAD CONDUCT DISCHARGE IS APPROVED.

(MAY BE CONTINUED ON REVERSE)

W.M. Drake

46. SIGNATURE GRADE

W. M. DRAKE, LT USN, BY DIRECTION OF CO.

47. UNIT I.D. CODE 00103

48. RATE SN

49. NAME (LAST, FIRST, MIDDLE) HOOPER, VAUGHN ELDIN

50. SSN 378-67-6789

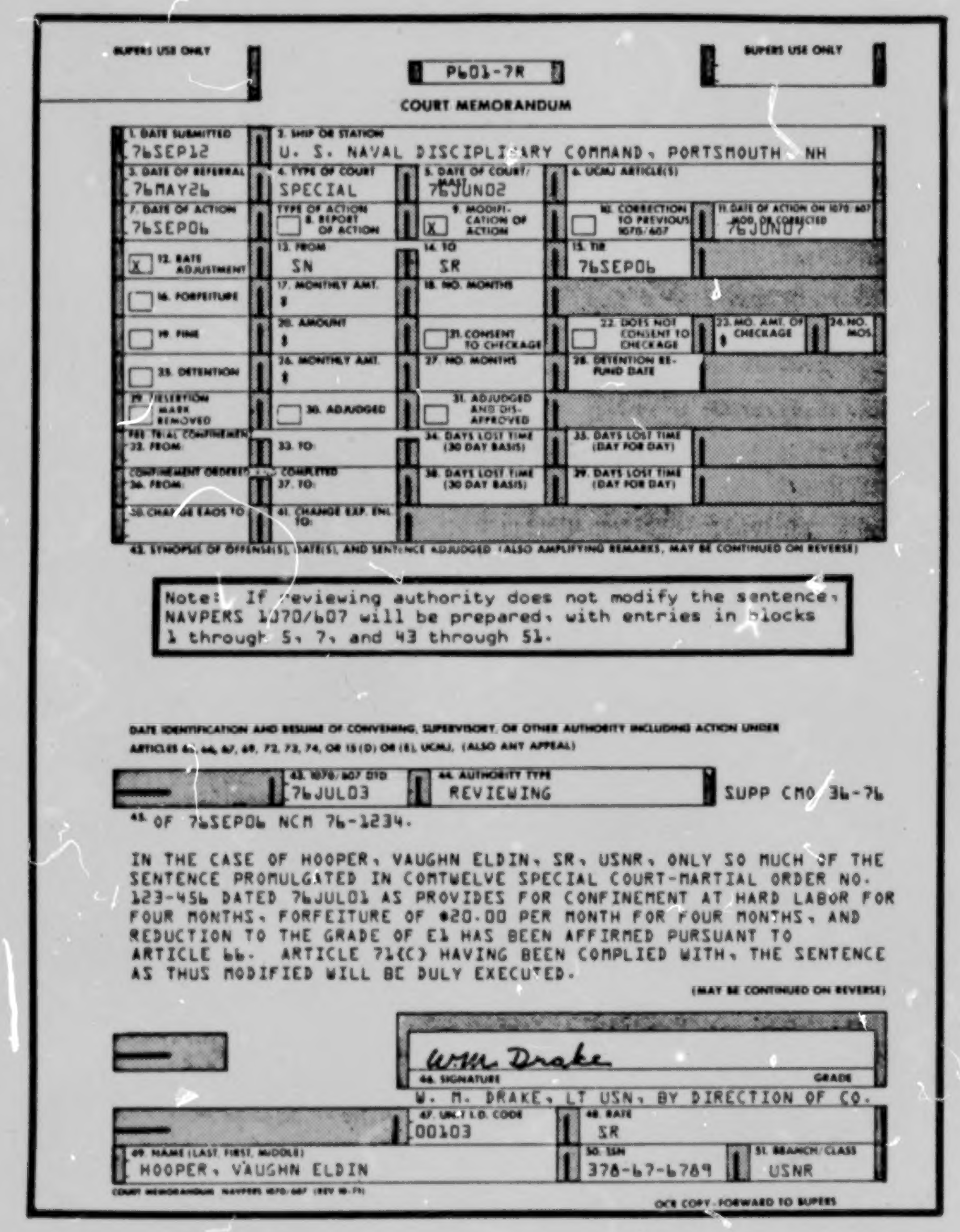
51. BRANCH/CLASS USNR

COURT MEMORANDUM NAVPERS 1070/607 (REV 10-71)

OCR COPY - FORWARD TO BUPERS

192.57

Figure 9-9.—Report of supervisory authority action.



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P601-7R

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**COURT MEMORANDUM**

| | | | | | |
|---|---|---|---|---|---|
| 1. DATE SUBMITTED<br>76SEP12 | 2. SHIP OR STATION<br>U. S. NAVAL DISCIPLINARY COMMAND, PORTSMOUTH, NH | | | | |
| 3. DATE OF REFERRAL<br>76MAY26 | 4. TYPE OF COURT<br>SPECIAL | 5. DATE OF COURT/MAST<br>76JUN02 | 6. UCMJ ARTICLE(S) | | |
| 7. DATE OF ACTION<br>76SEP06 | TYPE OF ACTION<br>☐ 8. REPORT OF ACTION | ☒ 9. MODIFICATION OF ACTION | ☐ 10. CORRECTION TO PREVIOUS 1070/607 | 11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED<br>76JUN07 | |
| ☒ 12. RATE ADJUSTMENT | 13. FROM<br>SN | 14. TO<br>SR | 15. TIR<br>76SEP06 | | |
| ☐ 16. FORFEITURE | 17. MONTHLY AMT.<br>$ | 18. NO. MONTHS | | | |
| ☐ 19. FINE | 20. AMOUNT<br>$ | ☐ 21. CONSENT TO CHECKAGE | ☐ 22. DOES NOT CONSENT TO CHECKAGE | 23. MO. AMT. OF CHECKAGE<br>$ | 24. NO. MOS. |
| ☐ 25. DETENTION | 26. MONTHLY AMT.<br>$ | 27. NO. MONTHS | 28. DETENTION REFUND DATE | | |
| ☐ 29. DESERTION MARK REMOVED | ☐ 30. ADJUDGED | ☐ 31. ADJUDGED AND DISAPPROVED | | | |
| PRE TRIAL CONFINEMENT<br>32. FROM: | 33. TO: | 34. DAYS LOST TIME (30 DAY BASIS) | 35. DAYS LOST TIME (DAY FOR DAY) | | |
| CONFINEMENT ORDERED AND COMPLETED<br>36. FROM: | 37. TO: | 38. DAYS LOST TIME (30 DAY BASIS) | 39. DAYS LOST TIME (DAY FOR DAY) | | |
| 40. CHANGE EAOS TO | 41. CHANGE EXP. ENL. TO: | | | | |

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

Note: If reviewing authority does not modify the sentence, NAVPERS 1070/607 will be prepared, with entries in blocks 1 through 5, 7, and 43 through 51.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15(D) OR (E), UCMJ. (ALSO ANY APPEAL)

| | | |
|---|---|---|
| 43. 1070/607 DTD<br>76JUL03 | 44. AUTHORITY TYPE<br>REVIEWING | SUPP CMO 36-76 |

45. OF 76SEP06 NCM 76-1234.

IN THE CASE OF HOOPER, VAUGHN ELDIN, SR, USNR, ONLY SO MUCH OF THE SENTENCE PROMULGATED IN COMTWELVE SPECIAL COURT-MARTIAL ORDER NO. 123-456 DATED 76JUL01 AS PROVIDES FOR CONFINEMENT AT HARD LABOR FOR FOUR MONTHS, FORFEITURE OF $20.00 PER MONTH FOR FOUR MONTHS, AND REDUCTION TO THE GRADE OF E1 HAS BEEN AFFIRMED PURSUANT TO ARTICLE 66. ARTICLE 71(C) HAVING BEEN COMPLIED WITH, THE SENTENCE AS THUS MODIFIED WILL BE DULY EXECUTED.

(MAY BE CONTINUED ON REVERSE)

W.M. Drake

46. SIGNATURE GRADE

W. M. DRAKE, LT USN, BY DIRECTION OF CO.

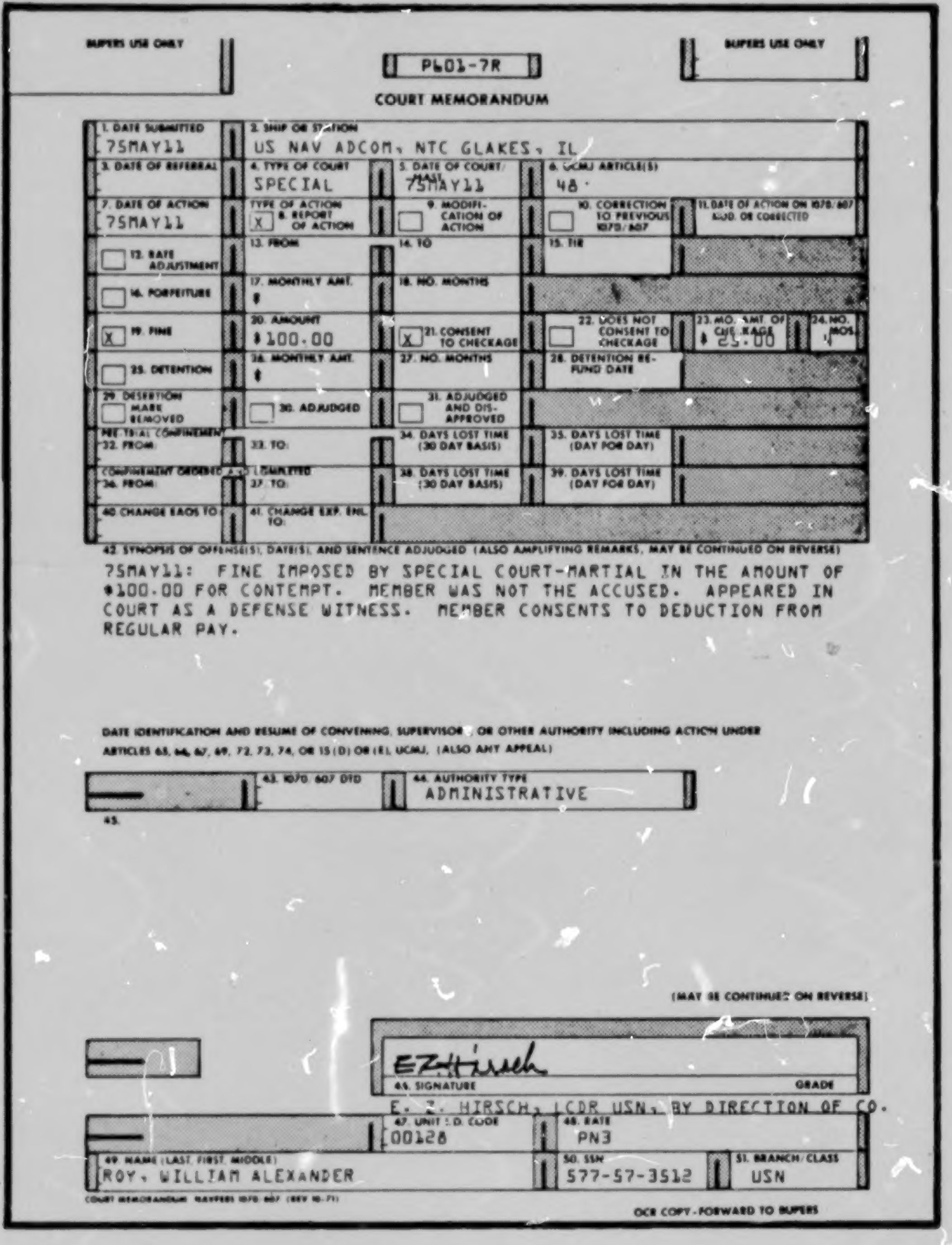
| | | |
|---|---|---|
| 47. UNIT I.D. CODE<br>00103 | 48. RATE<br>SR | |
| 49. NAME (LAST, FIRST, MIDDLE)<br>HOOPER, VAUGHN ELDIN | 50. SSN<br>378-67-6789 | 51. BRANCH/CLASS<br>USNR |

COURT MEMORANDUM NAVPERS 1070/607 (REV 10-71)

OCR COPY-FORWARD TO BUPERS

192.58

Figure 9-10.—Report of reviewing authority action.



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COURT MEMORANDUM

| | | | |
|---|---|---|---|
| 1. DATE SUBMITTED<br>75MAY11 | 2. SHIP OR STATION<br>US NAV ADCOM, NTC GLAKES, IL | | |
| 3. DATE OF REFERRAL | 4. TYPE OF COURT<br>SPECIAL | 5. DATE OF COURT/MAST<br>75MAY11 | 6. UCMJ ARTICLE(S)<br>48 |
| 7. DATE OF ACTION<br>75MAY11 | TYPE OF ACTION<br>☒ 8. REPORT OF ACTION | ☐ 9. MODIFICATION OF ACTION | ☐ 10. CORRECTION TO PREVIOUS 1070/607 |
| 11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED | | | |
| ☐ 12. RATE ADJUSTMENT | 13. FROM | 14. TO | 15. TIR |
| ☐ 16. FORFEITURE | 17. MONTHLY AMT.<br>$ | 18. NO. MONTHS | |
| ☒ 19. FINE | 20. AMOUNT<br>$100.00 | ☒ 21. CONSENT TO CHECKAGE | ☐ 22. DOES NOT CONSENT TO CHECKAGE |
| 23. MO. AMT. OF CHECKAGE<br>$ 25.00 | 24. NO. MOS.<br>4 | | |
| ☐ 25. DETENTION | 26. MONTHLY AMT.<br>$ | 27. NO. MONTHS | 28. DETENTION REFUND DATE |
| ☐ 29. DESERTION MARK REMOVED | ☐ 30. ADJUDGED | ☐ 31. ADJUDGED AND DISAPPROVED | |
| PRE-TRIAL CONFINEMENT<br>32. FROM: | 33. TO: | 34. DAYS LOST TIME (30 DAY BASIS) | 35. DAYS LOST TIME (DAY FOR DAY) |
| CONFINEMENT ORDERED AND COMPLETED<br>36. FROM: | 37. TO: | 38. DAYS LOST TIME (30 DAY BASIS) | 39. DAYS LOST TIME (DAY FOR DAY) |
| 40. CHANGE EAOS TO: | 41. CHANGE EXP. ENL. TO: | | |

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

75MAY11: FINE IMPOSED BY SPECIAL COURT-MARTIAL IN THE AMOUNT OF $100.00 FOR CONTEMPT. MEMBER WAS NOT THE ACCUSED. APPEARED IN COURT AS A DEFENSE WITNESS. MEMBER CONSENTS TO DEDUCTION FROM REGULAR PAY.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15(D) OR (E), UCMJ, (ALSO ANY APPEAL)

43. 1070/607 DTD

44. AUTHORITY TYPE
ADMINISTRATIVE

45.

(MAY BE CONTINUED ON REVERSE)

EZHirsch

46. SIGNATURE GRADE

E. Z. HIRSCH, LCDR USN, BY DIRECTION OF CO.

| | | |
|---|---|---|
| 47. UNIT I.D. CODE<br>00128 | 48. RATE<br>PN3 | |
| 49. NAME (LAST, FIRST, MIDDLE)<br>ROY, WILLIAM ALEXANDER | 50. SSN<br>577-57-3512 | 51. BRANCH/CLASS<br>USN |

COURT MEMORANDUM NAVPERS 1070/607 (REV 10-71)

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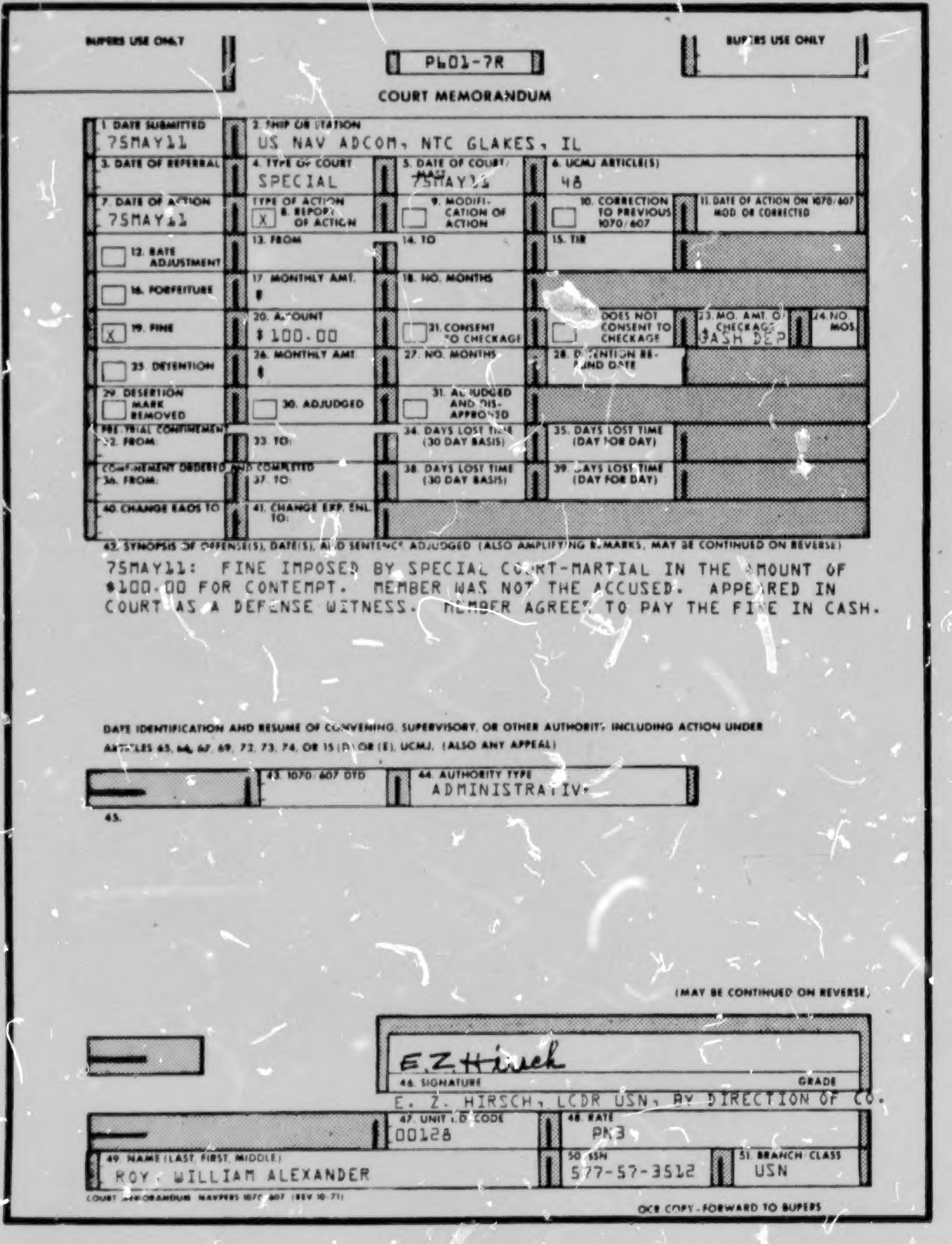
292.59

Figure 9-11.—Fine—member consents to checkage of pay.



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COURT MEMORANDUM

| | | | | | |
|---|---|---|---|---|---|
| 1. DATE SUBMITTED<br>75MAY11 | 2. SHIP OR STATION<br>US NAV ADCOM, NTC GLAKES, IL | | | | |
| 3. DATE OF REFERRAL | 4. TYPE OF COURT<br>SPECIAL | 5. DATE OF COURT/MAST<br>75MAY11 | 6. UCMJ ARTICLE(S)<br>48 | | |
| 7. DATE OF ACTION<br>75MAY11 | TYPE OF ACTION<br>☒ 8. REPORT OF ACTION | ☐ 9. MODIFICATION OF ACTION | ☐ 10. CORRECTION TO PREVIOUS 1070/607 | 11. DATE OF ACTION ON 1070/607 MOD OR CORRECTED | |
| ☐ 12. RATE ADJUSTMENT | 13. FROM | 14. TO | 15. TIR | | |
| ☐ 16. FORFEITURE | 17. MONTHLY AMT.<br>$ | 18. NO. MONTHS | | | |
| ☒ 19. FINE | 20. AMOUNT<br>$100.00 | ☐ 21. CONSENT TO CHECKAGE | ☐ DOES NOT CONSENT TO CHECKAGE | 23. MO. AMT. OF CHECKAGE<br>CASH DEP | 24. NO. MOS. |
| ☐ 25. DETENTION | 26. MONTHLY AMT.<br>$ | 27. NO. MONTHS | 28. DETENTION REFUND DATE | | |
| ☐ 29. DESERTION MARK REMOVED | ☐ 30. ADJUDGED | ☐ 31. ADJUDGED AND DISAPPROVED | | | |
| PRE-TRIAL CONFINEMENT<br>32. FROM: | 33. TO: | 34. DAYS LOST TIME (30 DAY BASIS) | 35. DAYS LOST TIME (DAY FOR DAY) | | |
| CONFINEMENT ORDERED AND COMPLETED<br>36. FROM: | 37. TO: | 38. DAYS LOST TIME (30 DAY BASIS) | 39. DAYS LOST TIME (DAY FOR DAY) | | |
| 40. CHANGE EAOS TO | 41. CHANGE EXP. ENL. TO: | | | | |

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

75MAY11: FINE IMPOSED BY SPECIAL COURT-MARTIAL IN THE AMOUNT OF $100.00 FOR CONTEMPT. MEMBER WAS NOT THE ACCUSED. APPEARED IN COURT AS A DEFENSE WITNESS. MEMBER AGREED TO PAY THE FINE IN CASH.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15(D) OR (E), UCMJ. (ALSO ANY APPEAL)

| | | |
|---|---|---|
| 45. | 43. 1070/607 DTD | 44. AUTHORITY TYPE<br>ADMINISTRATIVE |

(MAY BE CONTINUED ON REVERSE)

E.Z. Hirsch

46. SIGNATURE GRADE

E. Z. HIRSCH, LCDR USN, BY DIRECTION OF CO.

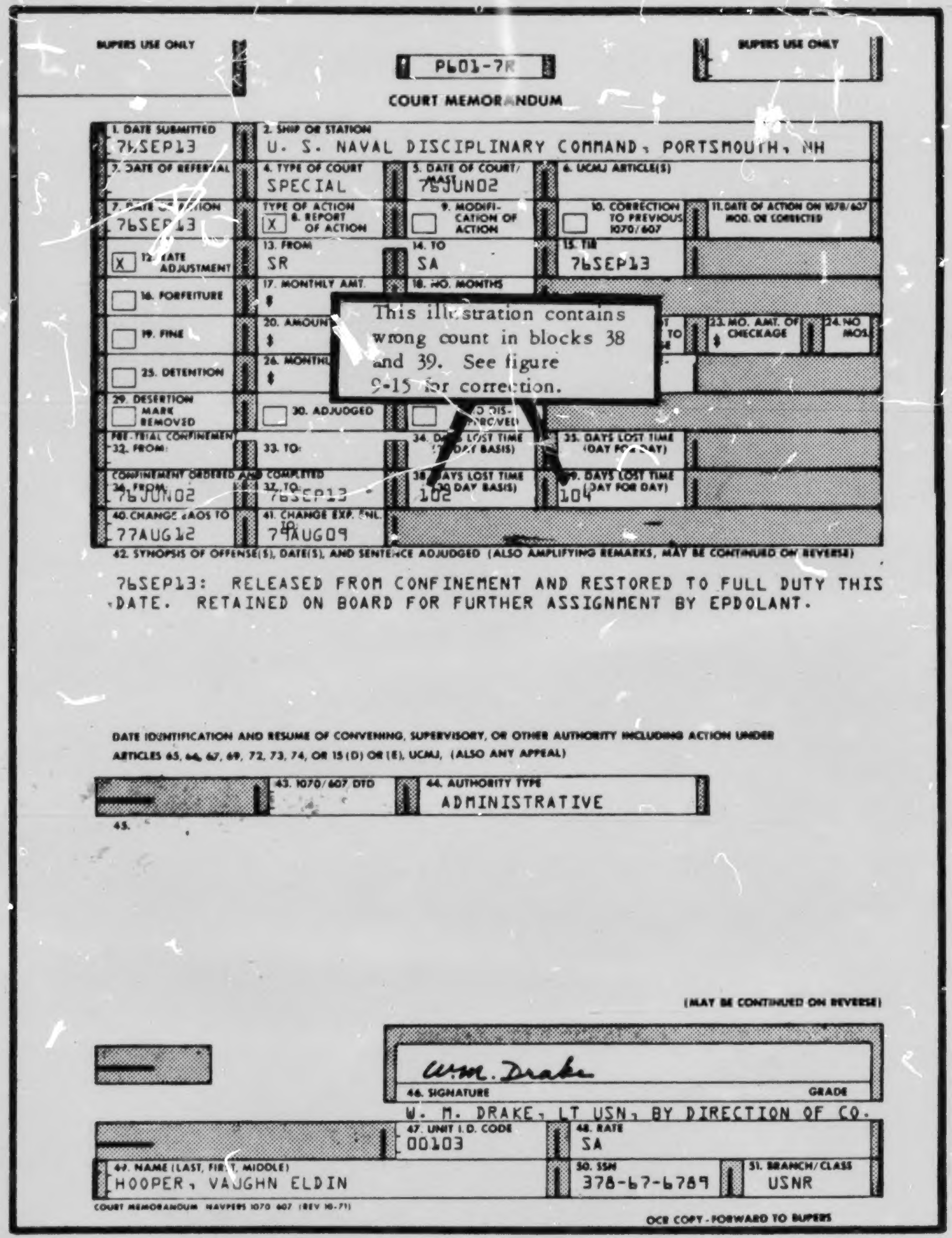
| | | |
|---|---|---|
| 47. UNIT I.D. CODE<br>00128 | 48. RATE<br>PK3 | |
| 49. NAME (LAST, FIRST, MIDDLE)<br>ROY, WILLIAM ALEXANDER | 50. SSN<br>577-57-3512 | 51. BRANCH CLASS<br>USN |

COURT MEMORANDUM NAVPERS 1070/607 (REV 10-71)

OCR COPY - FORWARD TO BUPERS

192.60

Figure 9-12.–Fine–member elects to pay in cash.



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COURT MEMORANDUM

1. DATE SUBMITTED: 76SEP13
2. SHIP OR STATION: U. S. NAVAL DISCIPLINARY COMMAND, PORTSMOUTH, NH
3. DATE OF REFERRAL:
4. TYPE OF COURT: SPECIAL
5. DATE OF COURT/MAST: 76JUN02
6. UCMJ ARTICLE(S):
7. DATE OF ACTION: 76SEP13
TYPE OF ACTION: ☒ 8. REPORT OF ACTION ☐ 9. MODIFICATION OF ACTION ☐ 10. CORRECTION TO PREVIOUS 1070/607
11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED:
☒ 12. RATE ADJUSTMENT 13. FROM: SR 14. TO: SA 15. TIR: 76SEP13
☐ 16. FORFEITURE 17. MONTHLY AMT. $ 18. NO. MONTHS
☐ 19. FINE 20. AMOUNT $ 23. MO. AMT. OF CHECKAGE $ 24. NO. MOS.
☐ 25. DETENTION 26. MONTHLY $
☐ 29. DESERTION MARK REMOVED ☐ 30. ADJUDGED ☐ DISAPPROVED
PRE-TRIAL CONFINEMENT 32. FROM: 33. TO: 34. DAYS LOST TIME (30 DAY BASIS) 35. DAYS LOST TIME (DAY FOR DAY)
CONFINEMENT ORDERED AND COMPLETED 36. FROM: 76JUN02 37. TO: 76SEP13 38. DAYS LOST TIME (30 DAY BASIS): 102 39. DAYS LOST TIME (DAY FOR DAY): 104
40. CHANGE EAOS TO: 77AUG12
41. CHANGE EXP. ENL. TO: 79AUG09

This illustration contains wrong count in blocks 38 and 39. See figure 9-15 for correction.

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

76SEP13: RELEASED FROM CONFINEMENT AND RESTORED TO FULL DUTY THIS DATE. RETAINED ON BOARD FOR FURTHER ASSIGNMENT BY EPDOLANT.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15(D) OR (E), UCMJ, (ALSO ANY APPEAL)

43. 1070/607 DTD:
44. AUTHORITY TYPE: ADMINISTRATIVE
45.

(MAY BE CONTINUED ON REVERSE)

W. M. Drake
46. SIGNATURE GRADE
W. M. DRAKE, LT USN, BY DIRECTION OF CO.
47. UNIT I.D. CODE: 00103
48. RATE: SA
49. NAME (LAST, FIRST, MIDDLE): HOOPER, VAUGHN ELDIN
50. SSN: 378-67-6789
51. BRANCH/CLASS: USNR

COURT MEMORANDUM NAVPERS 1070/607 (REV 10-71)

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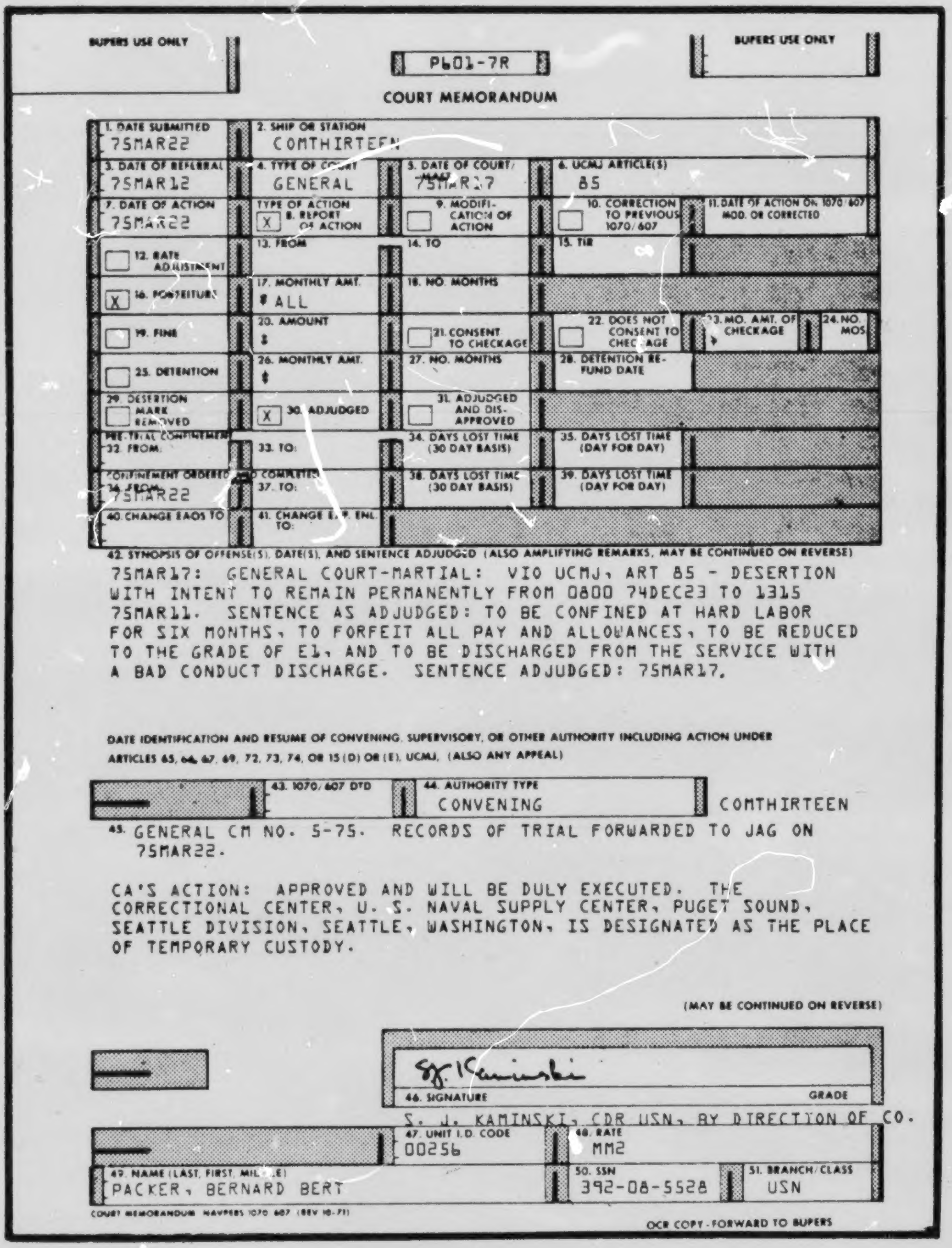
192.61

Figure 9-13.—Release from confinement ordered by court-martial.



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COURT MEMORANDUM

| | | | | | |
|---|---|---|---|---|---|
| 1. DATE SUBMITTED<br>75MAR22 | 2. SHIP OR STATION<br>COMTHIRTEEN | | | | |
| 3. DATE OF REFERRAL<br>75MAR12 | 4. TYPE OF COURT<br>GENERAL | 5. DATE OF COURT/MAST<br>75MAR17 | 6. UCMJ ARTICLE(S)<br>85 | | |
| 7. DATE OF ACTION<br>75MAR22 | TYPE OF ACTION<br>☒ 8. REPORT OF ACTION | ☐ 9. MODIFICATION OF ACTION | ☐ 10. CORRECTION TO PREVIOUS 1070/607 | 11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED | |
| ☐ 12. RATE ADJUSTMENT | 13. FROM | 14. TO | 15. TIR | | |
| ☒ 16. FORFEITURE | 17. MONTHLY AMT.<br>$ ALL | 18. NO. MONTHS | | | |
| ☐ 19. FINE | 20. AMOUNT<br>$ | ☐ 21. CONSENT TO CHECKAGE | ☐ 22. DOES NOT CONSENT TO CHECKAGE | 23. MO. AMT. OF CHECKAGE<br>$ | 24. NO. MOS |
| ☐ 25. DETENTION | 26. MONTHLY AMT.<br>$ | 27. NO. MONTHS | 28. DETENTION REFUND DATE | | |
| ☐ 29. DESERTION MARK REMOVED | ☒ 30. ADJUDGED | ☐ 31. ADJUDGED AND DISAPPROVED | | | |
| PRE-TRIAL CONFINEMENT<br>32. FROM: | 33. TO: | 34. DAYS LOST TIME (30 DAY BASIS) | 35. DAYS LOST TIME (DAY FOR DAY) | | |
| CONFINEMENT ORDERED AND COMPLETED<br>36. FROM:<br>75MAR22 | 37. TO: | 38. DAYS LOST TIME (30 DAY BASIS) | 39. DAYS LOST TIME (DAY FOR DAY) | | |
| 40. CHANGE EAOS TO | 41. CHANGE EXP. ENL. TO: | | | | |

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

75MAR17: GENERAL COURT-MARTIAL: VIO UCMJ, ART 85 - DESERTION WITH INTENT TO REMAIN PERMANENTLY FROM 0800 74DEC23 TO 1315 75MAR11. SENTENCE AS ADJUDGED: TO BE CONFINED AT HARD LABOR FOR SIX MONTHS, TO FORFEIT ALL PAY AND ALLOWANCES, TO BE REDUCED TO THE GRADE OF E1, AND TO BE DISCHARGED FROM THE SERVICE WITH A BAD CONDUCT DISCHARGE. SENTENCE ADJUDGED: 75MAR17.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15(D) OR (E), UCMJ. (ALSO ANY APPEAL)

| | | |
|---|---|---|
| 43. 1070/607 DTD | 44. AUTHORITY TYPE<br>CONVENING | COMTHIRTEEN |

45. GENERAL CM NO. 5-75. RECORDS OF TRIAL FORWARDED TO JAG ON 75MAR22.

CA'S ACTION: APPROVED AND WILL BE DULY EXECUTED. THE CORRECTIONAL CENTER, U. S. NAVAL SUPPLY CENTER, PUGET SOUND, SEATTLE DIVISION, SEATTLE, WASHINGTON, IS DESIGNATED AS THE PLACE OF TEMPORARY CUSTODY.

(MAY BE CONTINUED ON REVERSE)

S.J. Kaminski

46. SIGNATURE GRADE

S. J. KAMINSKI, CDR USN, BY DIRECTION OF CO.

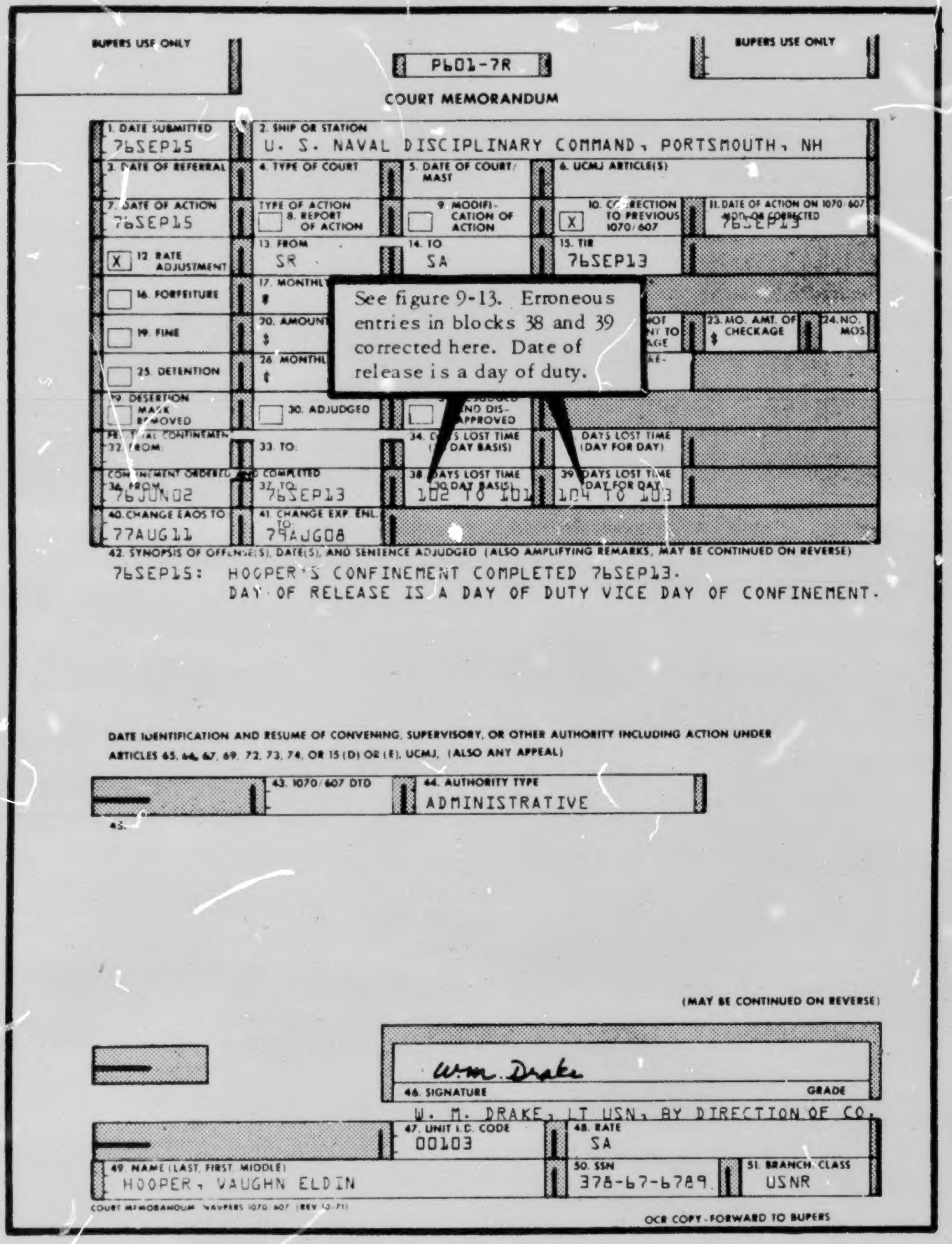
| | | | |
|---|---|---|---|
| 47. UNIT I.D. CODE<br>00256 | 48. RATE<br>MM2 | | |
| 49. NAME (LAST, FIRST, MIDDLE)<br>PACKER, BERNARD BERT | 50. SSN<br>392-08-5528 | 51. BRANCH/CLASS<br>USN | |

COURT MEMORANDUM NAVPERS 1070/607 (REV 10-71)

OCR COPY-FORWARD TO BUPERS

192.62

Figure 9-14.—Member found guilty of desertion charge.



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COURT MEMORANDUM

1. DATE SUBMITTED: 76SEP15
2. SHIP OR STATION: U. S. NAVAL DISCIPLINARY COMMAND, PORTSMOUTH, NH
3. DATE OF REFERRAL:
4. TYPE OF COURT:
5. DATE OF COURT/MAST:
6. UCMJ ARTICLE(S):
7. DATE OF ACTION: 76SEP15
TYPE OF ACTION ☐ 8. REPORT OF ACTION ☐ 9. MODIFICATION OF ACTION ☒ 10. CORRECTION TO PREVIOUS 1070/607
11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED: 76SEP13
☒ 12. RATE ADJUSTMENT
13. FROM: SR
14. TO: SA
15. TIR: 76SEP13
☐ 16. FORFEITURE
17. MONTHLY: $
☐ 19. FINE
20. AMOUNT: $
23. MO. AMT. OF CHECKAGE: $
24. NO. MOS.
☐ 25. DETENTION
26. MONTHLY: $
☐ 29. DESERTION MARK REMOVED
☐ 30. ADJUDGED
☐ AND DISAPPROVED
PRE-TRIAL CONFINEMENT 32. FROM:
33. TO:
34. DAYS LOST TIME (30 DAY BASIS)
DAYS LOST TIME (DAY FOR DAY)
CONFINEMENT ORDERED AND COMPLETED 36. FROM: 76JUN02
37. TO: 76SEP13
38. DAYS LOST TIME (30 DAY BASIS): 102 TO 101
39. DAYS LOST TIME (DAY FOR DAY): 104 TO 103
40. CHANGE EAOS TO: 77AUG11
41. CHANGE EXP. ENL. TO: 79AUG08

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

76SEP15: HOOPER'S CONFINEMENT COMPLETED 76SEP13.
DAY OF RELEASE IS A DAY OF DUTY VICE DAY OF CONFINEMENT.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15(D) OR (E), UCMJ, (ALSO ANY APPEAL)

43. 1070/607 DTD
44. AUTHORITY TYPE: ADMINISTRATIVE
45.

(MAY BE CONTINUED ON REVERSE)

W. M. Drake
46. SIGNATURE GRADE
W. M. DRAKE, LT USN, BY DIRECTION OF CO.
47. UNIT I.D. CODE: 00103
48. RATE: SA
49. NAME (LAST, FIRST, MIDDLE): HOOPER, VAUGHN ELDIN
50. SSN: 378-67-6789
51. BRANCH, CLASS: USNR

COURT MEMORANDUM NAVPERS 1070/607 (REV 12-71)

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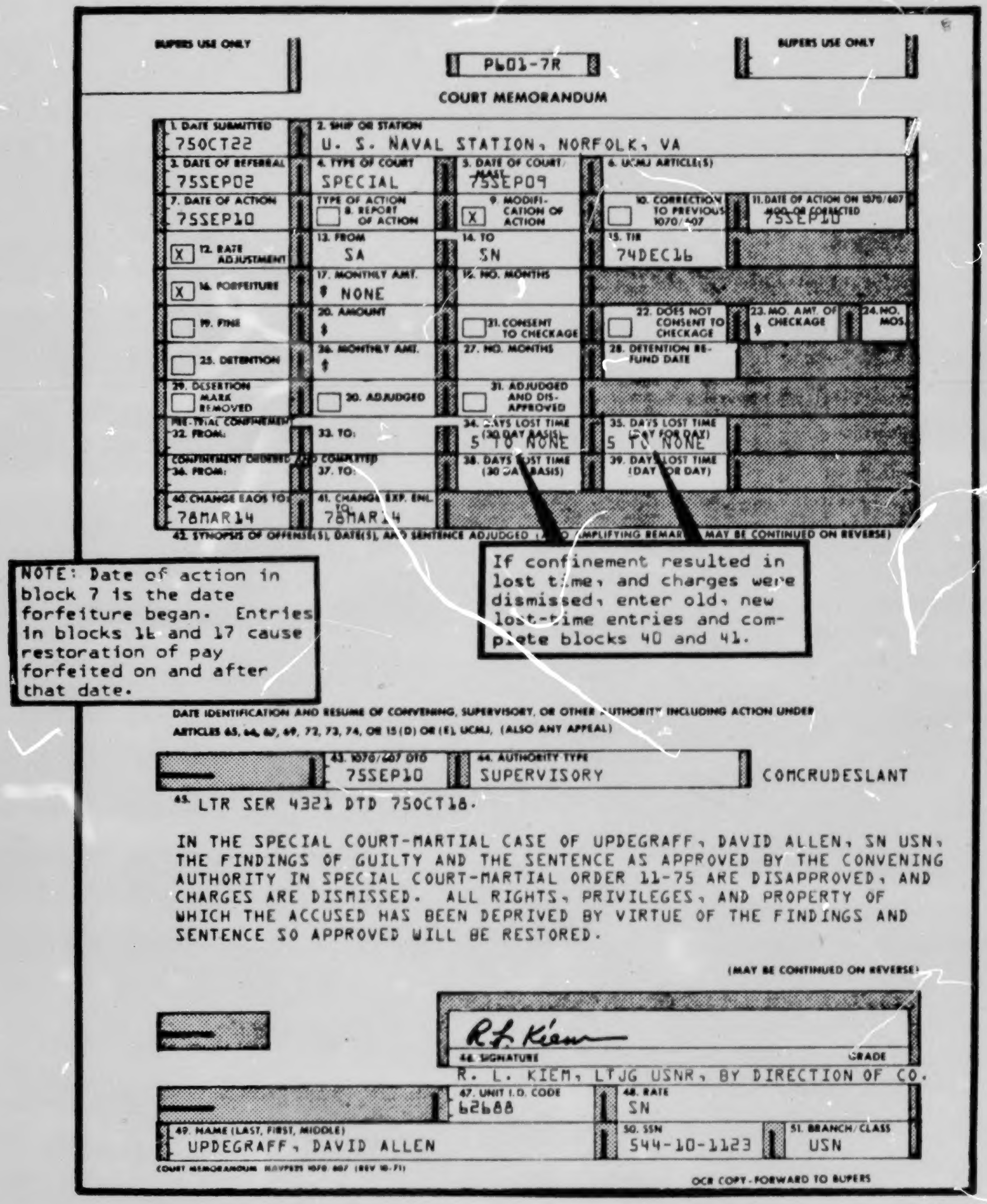
See figure 9-13. Erroneous entries in blocks 38 and 39 corrected here. Date of release is a day of duty.

192.63

Figure 9-15.—Adjustment of administrative error.



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P601-7R

BUPERS USE ONLY

COURT MEMORANDUM

| | | | | | |
|---|---|---|---|---|---|
| 1. DATE SUBMITTED<br>75OCT22 | 2. SHIP OR STATION<br>U. S. NAVAL STATION, NORFOLK, VA | | | | |
| 3. DATE OF REFERRAL<br>75SEP02 | 4. TYPE OF COURT<br>SPECIAL | 5. DATE OF COURT/MAST<br>75SEP09 | 6. UCMJ ARTICLE(S) | | |
| 7. DATE OF ACTION<br>75SEP10 | TYPE OF ACTION<br>☐ 8. REPORT OF ACTION | ☒ 9. MODIFICATION OF ACTION | ☐ 10. CORRECTION TO PREVIOUS 1070/607 | 11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED<br>75SEP10 | |
| ☒ 12. RATE ADJUSTMENT | 13. FROM<br>SA | 14. TO<br>SN | 15. TIR<br>74DEC16 | | |
| ☒ 16. FORFEITURE | 17. MONTHLY AMT.<br>$ NONE | 18. NO. MONTHS | | | |
| ☐ 19. FINE | 20. AMOUNT<br>$ | ☐ 21. CONSENT TO CHECKAGE | ☐ 22. DOES NOT CONSENT TO CHECKAGE | 23. MO. AMT. OF CHECKAGE<br>$ | 24. NO. MOS. |
| ☐ 25. DETENTION | 26. MONTHLY AMT.<br>$ | 27. NO. MONTHS | 28. DETENTION REFUND DATE | | |
| ☐ 29. DESERTION MARK REMOVED | ☐ 30. ADJUDGED | ☐ 31. ADJUDGED AND DISAPPROVED | | | |
| PRE-TRIAL CONFINEMENT<br>32. FROM: | 33. TO: | 34. DAYS LOST TIME (30 DAY BASIS)<br>5 TO NONE | 35. DAYS LOST TIME (DAY FOR DAY)<br>5 TO NONE | | |
| CONFINEMENT ORDERED AND COMPLETED<br>36. FROM: | 37. TO: | 38. DAYS LOST TIME (30 DAY BASIS) | 39. DAYS LOST TIME (DAY FOR DAY) | | |
| 40. CHANGE EAOS TO:<br>78MAR14 | 41. CHANGE EXP. ENL. TO:<br>78MAR14 | | | | |

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (AND AMPLIFYING REMARKS) (MAY BE CONTINUED ON REVERSE)

NOTE: Date of action in block 7 is the date forfeiture began. Entries in blocks 16 and 17 cause restoration of pay forfeited on and after that date.

If confinement resulted in lost time, and charges were dismissed, enter old, new lost-time entries and complete blocks 40 and 41.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15(D) OR (E), UCMJ, (ALSO ANY APPEAL)

| | | |
|---|---|---|
| 43. 1070/607 DTD<br>75SEP10 | 44. AUTHORITY TYPE<br>SUPERVISORY | COMCRUDESLANT |

45. LTR SER 4321 DTD 75OCT18.

IN THE SPECIAL COURT-MARTIAL CASE OF UPDEGRAFF, DAVID ALLEN, SN USN, THE FINDINGS OF GUILTY AND THE SENTENCE AS APPROVED BY THE CONVENING AUTHORITY IN SPECIAL COURT-MARTIAL ORDER 11-75 ARE DISAPPROVED, AND CHARGES ARE DISMISSED. ALL RIGHTS, PRIVILEGES, AND PROPERTY OF WHICH THE ACCUSED HAS BEEN DEPRIVED BY VIRTUE OF THE FINDINGS AND SENTENCE SO APPROVED WILL BE RESTORED.

(MAY BE CONTINUED ON REVERSE)

R. L. Kiem

46. SIGNATURE GRADE

R. L. KIEM, LTJG USNR, BY DIRECTION OF CO.

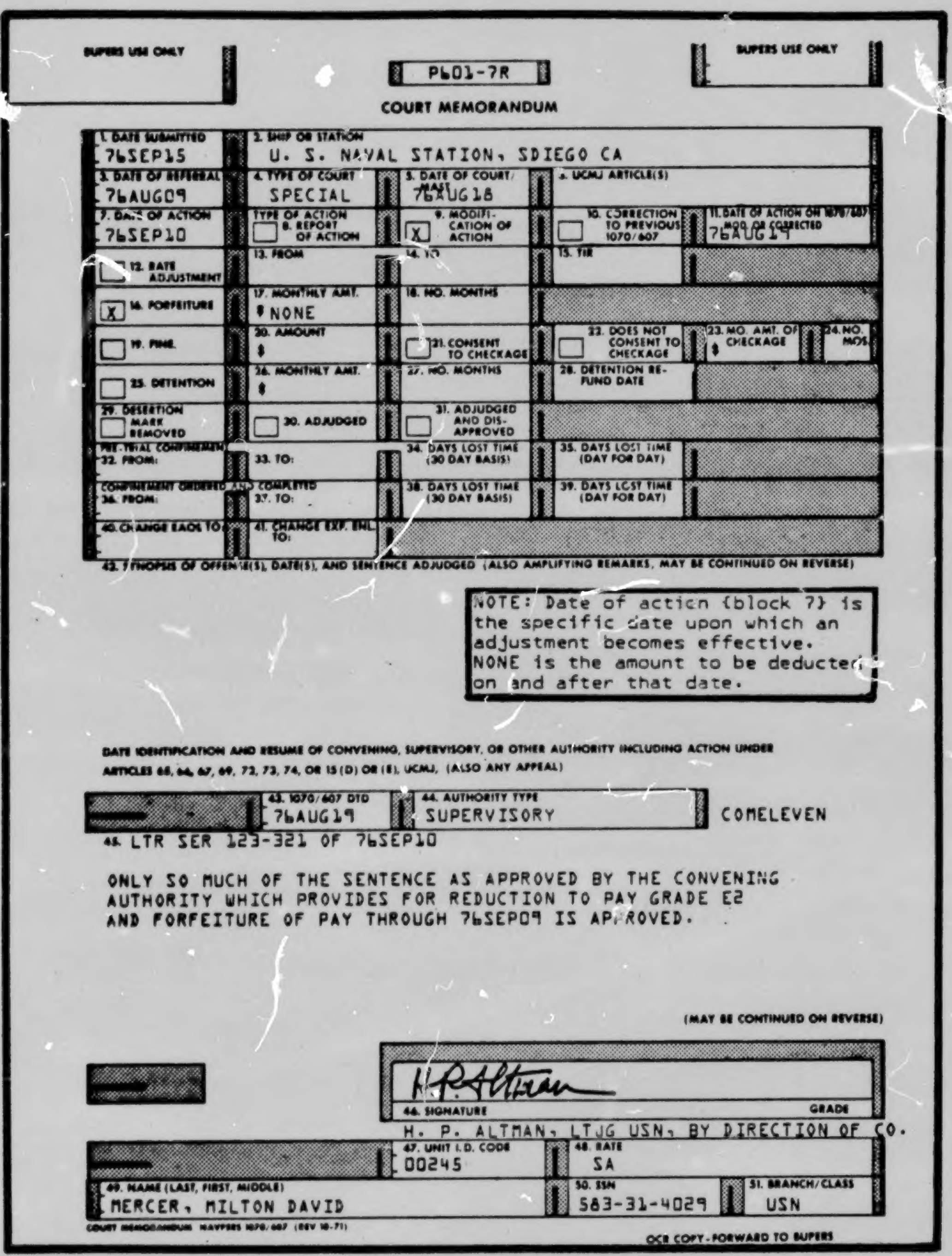
| | | | |
|---|---|---|---|
| 47. UNIT I.D. CODE<br>62688 | 48. RATE<br>SN | | |
| 49. NAME (LAST, FIRST, MIDDLE)<br>UPDEGRAFF, DAVID ALLEN | 50. SSN<br>544-10-1123 | 51. BRANCH/CLASS<br>USN | |

COURT MEMORANDUM NAVPERS 1070/607 (REV 10-71)

OCR COPY-FORWARD TO BUPERS

192.64

Figure 9-16.–Supervisory authority restores loss of rate, pay.



SUPERS USE ONLY

P601-7R

SUPERS USE ONLY

COURT MEMORANDUM

| | | | |
|---|---|---|---|
| 1. DATE SUBMITTED<br>76SEP15 | 2. SHIP OR STATION<br>U. S. NAVAL STATION, SDIEGO CA | | |
| 3. DATE OF REFERRAL<br>76AUG09 | 4. TYPE OF COURT<br>SPECIAL | 5. DATE OF COURT/MAST<br>76AUG18 | 6. UCMJ ARTICLE(S) |
| 7. DATE OF ACTION<br>76SEP10 | TYPE OF ACTION<br>☐ 8. REPORT OF ACTION | ☒ 9. MODIFICATION OF ACTION | ☐ 10. CORRECTION TO PREVIOUS 1070/607<br>11. DATE OF ACTION ON 1070/607 MOD OR CORRECTED<br>76AUG19 |
| ☐ 12. RATE ADJUSTMENT | 13. FROM | 14. TO | 15. TIR |
| ☒ 16. FORFEITURE | 17. MONTHLY AMT.<br>$ NONE | 18. NO. MONTHS | |
| ☐ 19. FINE. | 20. AMOUNT<br>$ | ☐ 21. CONSENT TO CHECKAGE | ☐ 22. DOES NOT CONSENT TO CHECKAGE<br>23. MO. AMT. OF CHECKAGE $<br>24. NO. MOS. |
| ☐ 25. DETENTION | 26. MONTHLY AMT.<br>$ | 27. NO. MONTHS | 28. DETENTION REFUND DATE |
| 29. DESERTION<br>☐ MARK REMOVED | ☐ 30. ADJUDGED | ☐ 31. ADJUDGED AND DISAPPROVED | |
| PRE-TRIAL CONFINEMENT<br>32. FROM: | 33. TO: | 34. DAYS LOST TIME (30 DAY BASIS) | 35. DAYS LOST TIME (DAY FOR DAY) |
| CONFINEMENT ORDERED AND COMPLETED<br>36. FROM: | 37. TO: | 38. DAYS LOST TIME (30 DAY BASIS) | 39. DAYS LOST TIME (DAY FOR DAY) |
| 40. CHANGE EAOS TO: | 41. CHANGE EXP. ENL. TO: | | |

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

NOTE: Date of action {block 7} is the specific date upon which an adjustment becomes effective. NONE is the amount to be deducted on and after that date.

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15 (D) OR (E), UCMJ, (ALSO ANY APPEAL)

| | | |
|---|---|---|
| 43. 1070/607 DTD<br>76AUG19 | 44. AUTHORITY TYPE<br>SUPERVISORY | COMELEVEN |

45. LTR SER 123-321 OF 76SEP10

ONLY SO MUCH OF THE SENTENCE AS APPROVED BY THE CONVENING
AUTHORITY WHICH PROVIDES FOR REDUCTION TO PAY GRADE E2
AND FORFEITURE OF PAY THROUGH 76SEP09 IS APPROVED.

(MAY BE CONTINUED ON REVERSE)

H. P. Altman

46. SIGNATURE GRADE

H. P. ALTMAN, LTJG USN, BY DIRECTION OF CO.

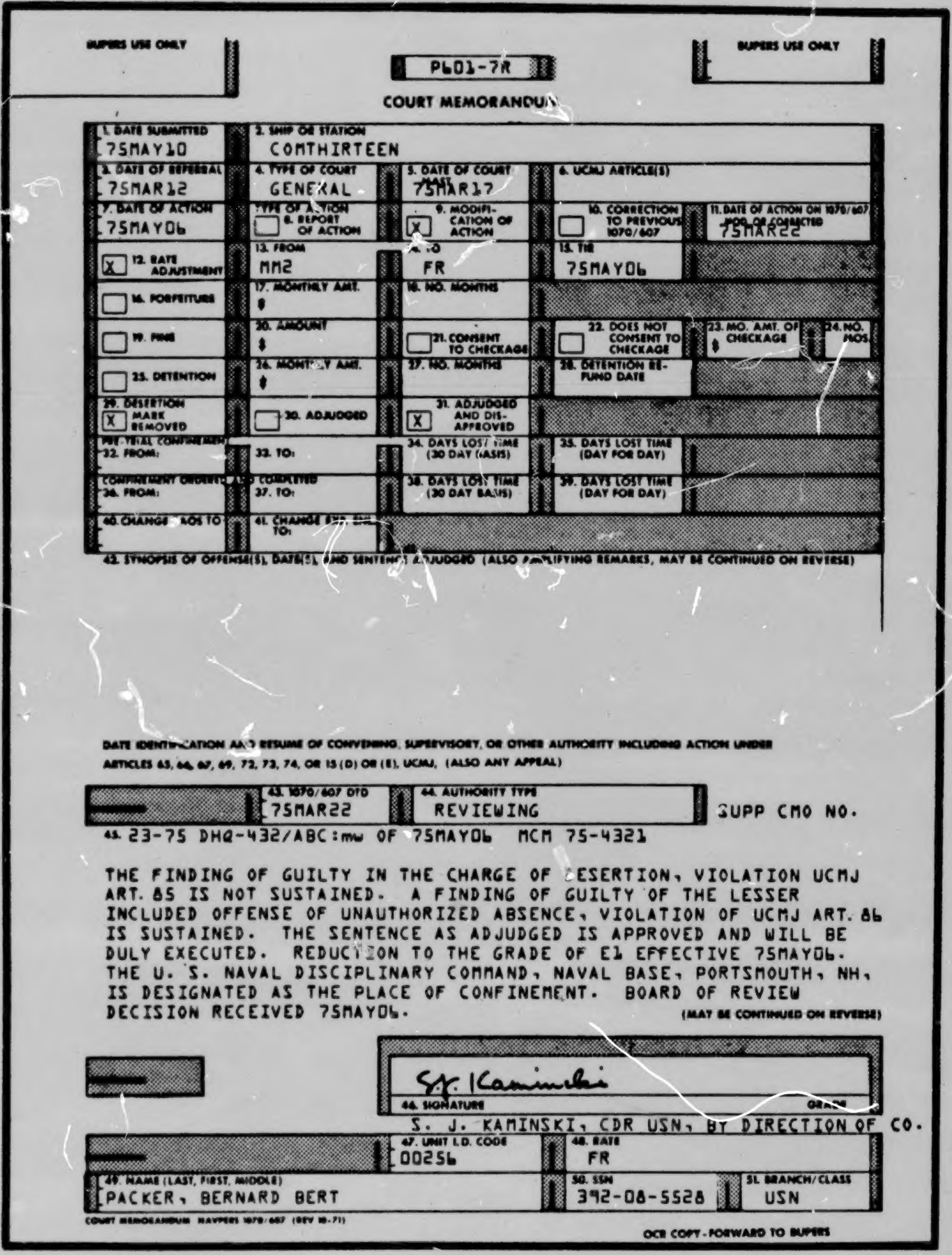
| | | |
|---|---|---|
| 47. UNIT I.D. CODE<br>00245 | 48. RATE<br>SA | |
| 49. NAME (LAST, FIRST, MIDDLE)<br>MERCER, MILTON DAVID | 50. SSN<br>583-31-4029 | 51. BRANCH/CLASS<br>USN |

COURT MEMORANDUM NAVPERS 1070/607 (REV 10-71)

OCR COPY-FORWARD TO BUPERS

192.65

Figure 9-17.—Supervisory authority stops loss of pay.



BUPERS USE ONLY

P601-7R

BUPERS USE ONLY

COURT MEMORANDUM

| | | | | | |
|---|---|---|---|---|---|
| 1. DATE SUBMITTED<br>75MAY10 | 2. SHIP OR STATION<br>COMTHIRTEEN | | | | |
| 3. DATE OF REFERRAL<br>75MAR12 | 4. TYPE OF COURT<br>GENERAL | 5. DATE OF COURT MART.<br>75MAR17 | 6. UCMJ ARTICLE(S) | | |
| 7. DATE OF ACTION<br>75MAY06 | TYPE OF ACTION<br>☐ 8. REPORT OF ACTION | ☒ 9. MODIFICATION OF ACTION | ☐ 10. CORRECTION TO PREVIOUS 1070/607 | 11. DATE OF ACTION ON 1070/607 MOD. OR CORRECTED<br>75MAR22 | |
| ☒ 12. RATE ADJUSTMENT | 13. FROM<br>MM2 | 14. TO<br>FR | 15. TIR<br>75MAY06 | | |
| ☐ 16. FORFEITURE | 17. MONTHLY AMT.<br>$ | 18. NO. MONTHS | | | |
| ☐ 19. FINE | 20. AMOUNT<br>$ | ☐ 21. CONSENT TO CHECKAGE | ☐ 22. DOES NOT CONSENT TO CHECKAGE | 23. MO. AMT. OF CHECKAGE<br>$ | 24. NO. MOS. |
| ☐ 25. DETENTION | 26. MONTHLY AMT.<br>$ | 27. NO. MONTHS | 28. DETENTION REFUND DATE | | |
| 29. DESERTION<br>☒ MARK REMOVED | ☐ 30. ADJUDGED | ☒ 31. ADJUDGED AND DISAPPROVED | | | |
| PRE-TRIAL CONFINEMENT<br>32. FROM: | 33. TO: | 34. DAYS LOST TIME (30 DAY BASIS) | 35. DAYS LOST TIME (DAY FOR DAY) | | |
| CONFINEMENT ORDERED AND COMPLETED<br>36. FROM: | 37. TO: | 38. DAYS LOST TIME (30 DAY BASIS) | 39. DAYS LOST TIME (DAY FOR DAY) | | |
| 40. CHANGE EAOS TO | 41. CHANGE EXP. ENL. TO: | | | | |

42. SYNOPSIS OF OFFENSE(S), DATE(S), AND SENTENCE ADJUDGED (ALSO AMPLIFYING REMARKS, MAY BE CONTINUED ON REVERSE)

DATE IDENTIFICATION AND RESUME OF CONVENING, SUPERVISORY, OR OTHER AUTHORITY INCLUDING ACTION UNDER ARTICLES 65, 66, 67, 69, 72, 73, 74, OR 15 (D) OR (E), UCMJ, (ALSO ANY APPEAL)

| | |
|---|---|
| 43. 1070/607 DTD<br>75MAR22 | 44. AUTHORITY TYPE<br>REVIEWING |

SUPP CMO NO.

45. 23-75 DHQ-432/ABC:mw OF 75MAY06 MCM 75-4321

THE FINDING OF GUILTY IN THE CHARGE OF DESERTION, VIOLATION UCMJ ART. 85 IS NOT SUSTAINED. A FINDING OF GUILTY OF THE LESSER INCLUDED OFFENSE OF UNAUTHORIZED ABSENCE, VIOLATION OF UCMJ ART. 86 IS SUSTAINED. THE SENTENCE AS ADJUDGED IS APPROVED AND WILL BE DULY EXECUTED. REDUCTION TO THE GRADE OF E1 EFFECTIVE 75MAY06. THE U. S. NAVAL DISCIPLINARY COMMAND, NAVAL BASE, PORTSMOUTH, NH, IS DESIGNATED AS THE PLACE OF CONFINEMENT. BOARD OF REVIEW DECISION RECEIVED 75MAY06.

(MAY BE CONTINUED ON REVERSE)

S. J. Kaminski

46. SIGNATURE GRADE

S. J. KAMINSKI, CDR USN, BY DIRECTION OF CO.

| | | |
|---|---|---|
| 47. UNIT I.D. CODE<br>00256 | 48. RATE<br>FR | |
| 49. NAME (LAST, FIRST, MIDDLE)<br>PACKER, BERNARD BERT | 50. SSN<br>392-08-5528 | 51. BRANCH/CLASS<br>USN |

COURT MEMORANDUM NAVPERS 1070/607 (REV 10-71)

OCR COPY - FORWARD TO BUPERS

192.66

Figure 9-18.—Desertion—finding of guilty revoked.

- a copy of the initial and any supplementary CMO's;
- an endorsement on the accused's copy of the CMR decision notifying him of his right to petition COMA for review;
- a form of petition for review; and
- a postcard receipt to be signed by the accused.

Detailed instructions on the action to be taken may also be included.

**Action by OEGCMJ**

On receipt of a promulgation package, the OEGCMJ must determine whether the accused is still under his jurisdiction. If the accused has been transferred from his jurisdiction, the promulgation package must be forwarded by endorsement, copy to JAG, to the officer currently exercising GCM jurisdiction over the accused. If the current location of the accused is unknown, communication by expeditious means to the CA should be initiated to determine the accused's location, keeping the JAG advised. If the accused is under the jurisdiction of the GCM authority who receives the package and is present within his command, the following action must be taken:

- The accused's copy of the CMR decision, with the endorsement thereon, and the petition for review form must be delivered to the accused. See figures 9-19 and 9-20.
- The accused's signature should be obtained on the postcard receipt. If the accused refuses to sign the receipt, a certificate of personal service stating the facts must be prepared. See figure 9-21.
- The date of service must be noted on the copy of the CMR's decision marked for the GCM authority and the copy marked for the accused's CO, if appropriate, and the copies filed accordingly. See figure 9-22.
- The postcard receipt or certificate of personal service should be forwarded promptly to the Judge Advocate General.

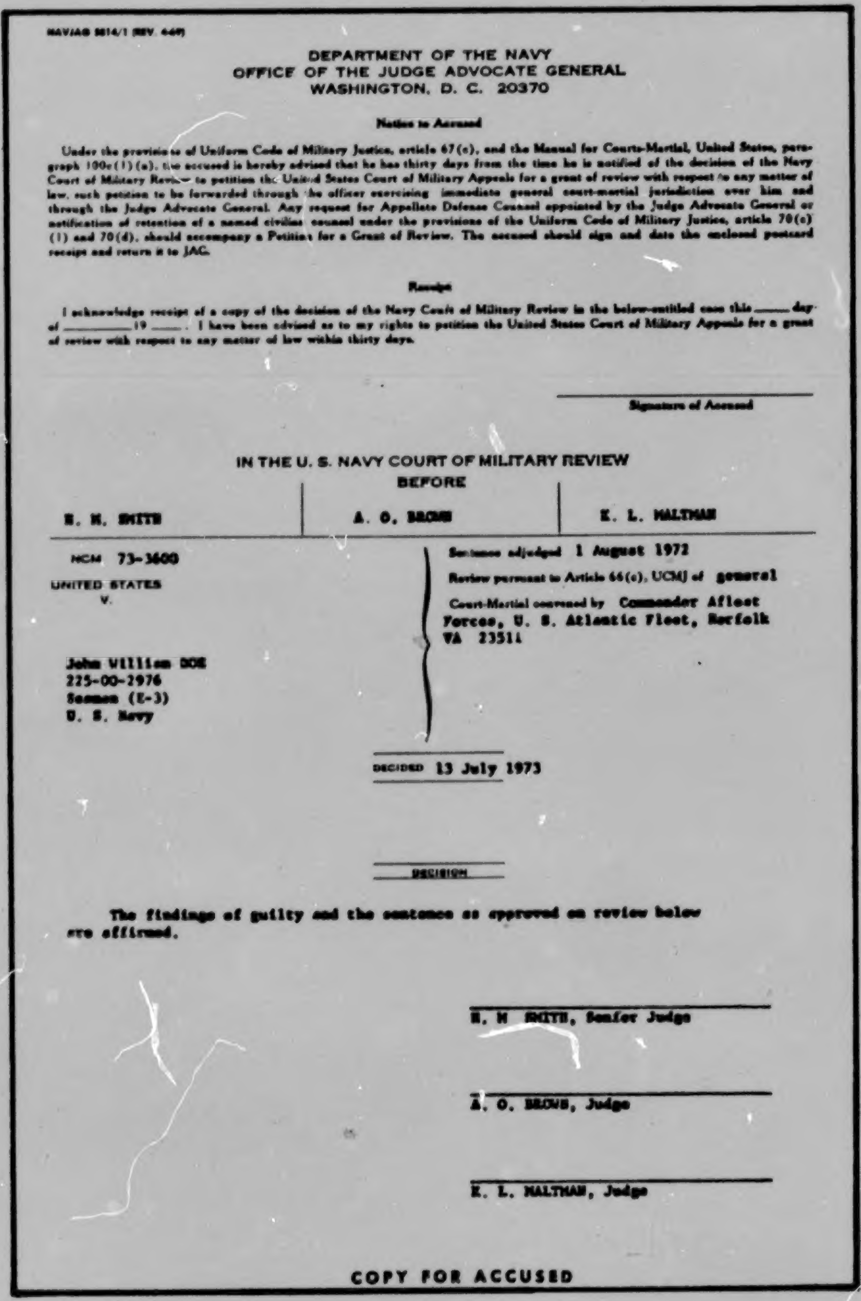
Figure 9-23 is a copy of the detailed instructions normally accompanying the promulgation package.

If the accused has been granted leave to await appellate review or administratively separated prior to completion of appellate review, in accordance with the provisions of the *BUPERS Manual* or *Marine Corps Manual*, as appropriate, the following procedures apply:

- Service of the accused's copy of the CMR decision must be made by registered mail, return receipt requested.
- The signature on the return receipt by anyone at the accused's leave address (or address of record if administratively separated) constitutes notification as of the date of the receipt to the accused of the decision of the CMR and starts the running of the 30-day period within which appeal to COMA must be made.
- The GCM authority must cause a certificate of service by registered mail to be executed and mailed, together with the return receipt, to the Judge Advocate General. See Figure 9-24. If no signed return receipt is received because the accused has changed his address without notifying his CO, for example, constructive service must be made.

When delivery cannot be made to an accused because he is absent without leave from his assigned ship or station, or because, having been granted leave, he has changed his address without notifying his CO, or because, having been administratively separated, he has changed the address listed as his home of record at the time of his separation without notifying proper authorities, constructive service may be made by certificate of attempted service, in accordance with the following:

- The certificate of attempted service must be executed in quintuplicate by the officer attempting service, and must show the date, place, and manner in which service was attempted. It must also show either (1) that personal service could not be made because the accused was absent without authority from his assigned ship or station, or (2) that service by registered mail, return receipt requested, could not be made at the accused's leave address because he changed the address without notifying his CO. The following items, as appropriate, must be submitted with the certificate of attempted service: (1) an authenticated extract copy of the entry in the service record of the



NAVJAG 5814/1 (REV. 4-69)

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D. C. 20370

**Notice to Accused**

Under the provisions of Uniform Code of Military Justice, article 67(c), and the Manual for Courts-Martial, United States, paragraph 100c(1)(a), the accused is hereby advised that he has thirty days from the time he is notified of the decision of the Navy Court of Military Review to petition the United States Court of Military Appeals for a grant of review with respect to any matter of law, such petition to be forwarded through the officer exercising immediate general court-martial jurisdiction over him and through the Judge Advocate General. Any request for Appellate Defense Counsel appointed by the Judge Advocate General or notification of retention of a named civilian counsel under the provisions of the Uniform Code of Military Justice, article 70(c)(1) and 70(d), should accompany a Petition for a Grant of Review. The accused should sign and date the enclosed postcard receipt and return it to JAG.

**Receipt**

I acknowledge receipt of a copy of the decision of the Navy Court of Military Review in the below-entitled case this _____ day of __________ 19 ____. I have been advised as to my rights to petition the United States Court of Military Appeals for a grant of review with respect to any matter of law within thirty days.

________________________
Signature of Accused

IN THE U. S. NAVY COURT OF MILITARY REVIEW
BEFORE

| | | |
|---|---|---|
| H. H. SMITH | A. O. BROWN | E. L. MALTMAN |

NCM 73-3600

UNITED STATES
v.

John William DOE
225-00-2976
Seaman (E-3)
U. S. Navy

Sentence adjudged 1 August 1972

Review pursuant to Article 66(c), UCMJ of general

Court-Martial convened by Commander Afloat Forces, U. S. Atlantic Fleet, Norfolk VA 23511

DECIDED 13 July 1973

DECISION

The findings of guilty and the sentence as approved on review below are affirmed.

________________________
H. H SMITH, Senior Judge

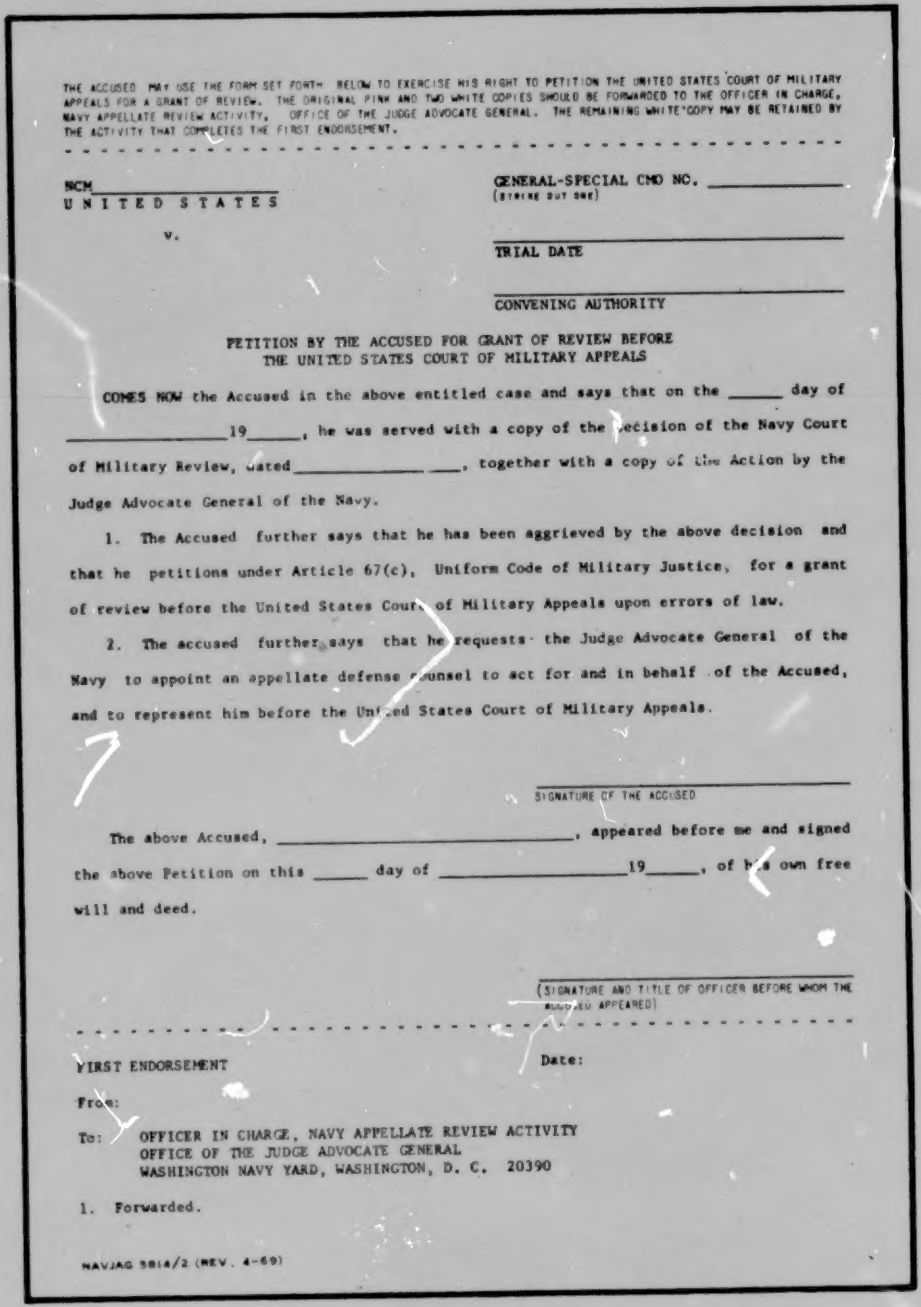
________________________
A. O. BROWN, Judge

________________________
E. L. MALTMAN, Judge

COPY FOR ACCUSED

192.67

Figure 9-19.—Accused's Copy of CMO decision.



THE ACCUSED MAY USE THE FORM SET FORTH BELOW TO EXERCISE HIS RIGHT TO PETITION THE UNITED STATES COURT OF MILITARY APPEALS FOR A GRANT OF REVIEW. THE ORIGINAL PINK AND TWO WHITE COPIES SHOULD BE FORWARDED TO THE OFFICER IN CHARGE, NAVY APPELLATE REVIEW ACTIVITY, OFFICE OF THE JUDGE ADVOCATE GENERAL. THE REMAINING WHITE COPY MAY BE RETAINED BY THE ACTIVITY THAT COMPLETES THE FIRST ENDORSEMENT.

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

NCM ____________________

UNITED STATES

v.

GENERAL-SPECIAL CMO NO. ______________
(STRIKE OUT ONE)

______________________________
TRIAL DATE

______________________________
CONVENING AUTHORITY

PETITION BY THE ACCUSED FOR GRANT OF REVIEW BEFORE
THE UNITED STATES COURT OF MILITARY APPEALS

COMES NOW the Accused in the above entitled case and says that on the ______ day of ________________ 19______, he was served with a copy of the decision of the Navy Court of Military Review, dated ______________ ____, together with a copy of the Action by the Judge Advocate General of the Navy.

1. The Accused further says that he has been aggrieved by the above decision and that he petitions under Article 67(c), Uniform Code of Military Justice, for a grant of review before the United States Court of Military Appeals upon errors of law.

2. The accused further says that he requests the Judge Advocate General of the Navy to appoint an appellate defense counsel to act for and in behalf of the Accused, and to represent him before the United States Court of Military Appeals.

______________________________
SIGNATURE OF THE ACCUSED

The above Accused, ______________________________, appeared before me and signed the above Petition on this ______ day of ____________________ 19______, of his own free will and deed.

______________________________
(SIGNATURE AND TITLE OF OFFICER BEFORE WHOM THE ACCUSED APPEARED)

- - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - - -

FIRST ENDORSEMENT Date:

From:

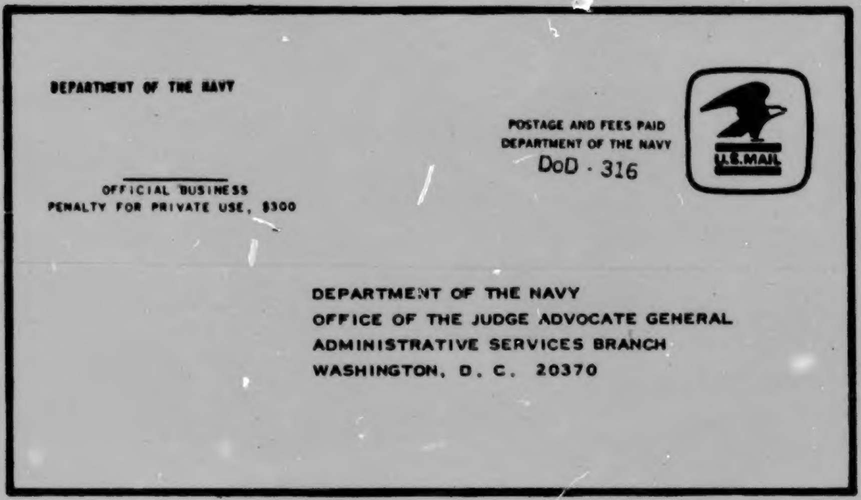
To: OFFICER IN CHARGE, NAVY APPELLATE REVIEW ACTIVITY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON NAVY YARD, WASHINGTON, D. C. 20390

1. Forwarded.

NAVJAG 5814/2 (REV. 4-69)

192.68

Figure 9-20.—Petition for grant of review by COMA.



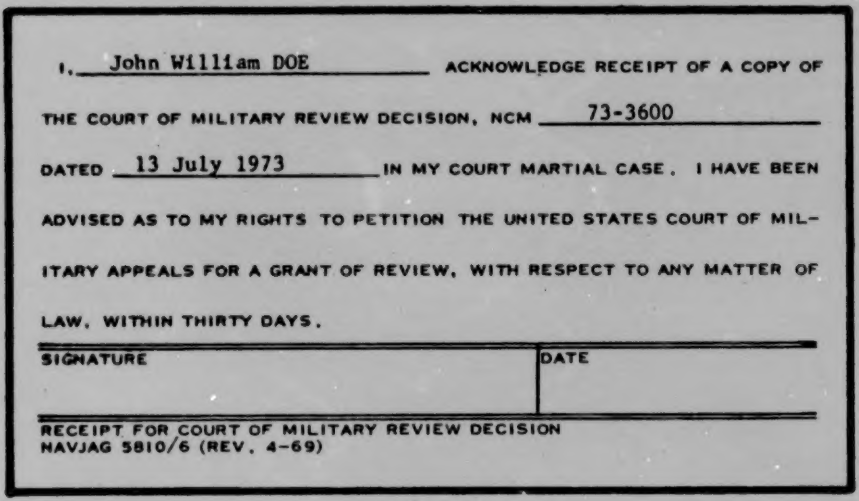
DEPARTMENT OF THE NAVY

POSTAGE AND FEES PAID
DEPARTMENT OF THE NAVY
DoD - 316

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE, $300

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
ADMINISTRATIVE SERVICES BRANCH
WASHINGTON, D. C. 20370

FRONT



I, John William DOE ACKNOWLEDGE RECEIPT OF A COPY OF THE COURT OF MILITARY REVIEW DECISION, NCM 73-3600 DATED 13 July 1973 IN MY COURT MARTIAL CASE. I HAVE BEEN ADVISED AS TO MY RIGHTS TO PETITION THE UNITED STATES COURT OF MILITARY APPEALS FOR A GRANT OF REVIEW, WITH RESPECT TO ANY MATTER OF LAW, WITHIN THIRTY DAYS.

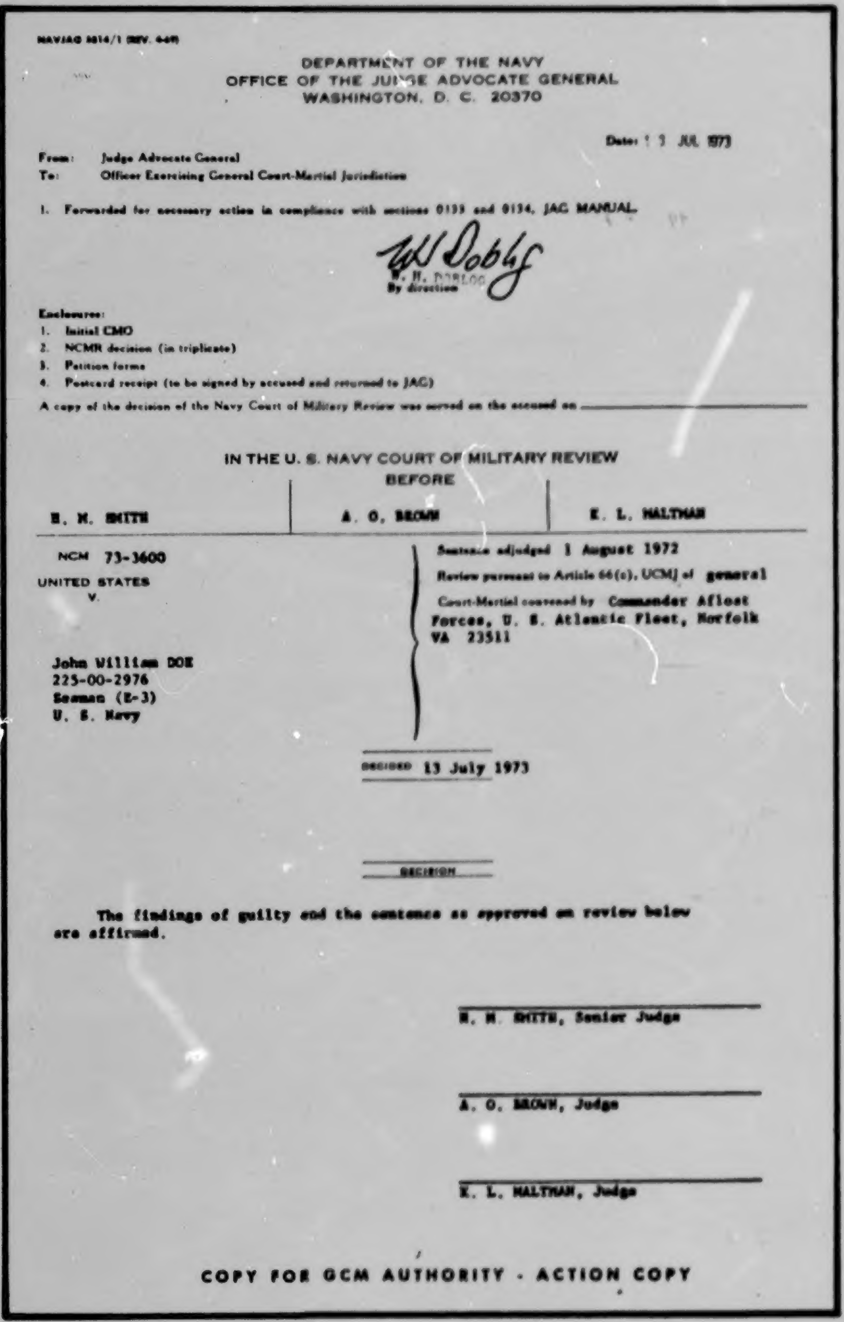
| SIGNATURE | DATE |
|---|---|
| | |

RECEIPT FOR COURT OF MILITARY REVIEW DECISION
NAVJAG 5810/6 (REV. 4-69)

BACK

192.69

Figure 9-21.—Postcard receipt for accused's copy of CMR decision.



NAVJAG 5814/1 (REV. 4-69)

DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON, D. C. 20370

Date: 13 JUL 1973

From: Judge Advocate General
To: Officer Exercising General Court-Martial Jurisdiction

1. Forwarded for necessary action in compliance with sections 0133 and 0134, JAG MANUAL.

W H Dobloq
W. H. DOBLOG
By direction

Enclosures:
1. Initial CMO
2. NCMR decision (in triplicate)
3. Petition forms
4. Postcard receipt (to be signed by accused and returned to JAG)

A copy of the decision of the Navy Court of Military Review was served on the accused on ______

IN THE U. S. NAVY COURT OF MILITARY REVIEW
BEFORE

| B. M. SMITH | A. O. BROWN | E. L. HALTMAN |
|---|---|---|

NCM 73-3600
UNITED STATES
v.

John William DOE
225-00-2976
Seaman (E-3)
U. S. Navy

Sentence adjudged 1 August 1972
Review pursuant to Article 66(c), UCMJ of general
Court-Martial convened by Commander Afloat Forces, U. S. Atlantic Fleet, Norfolk VA 23511

DECIDED 13 July 1973

DECISION

The findings of guilty and the sentence as approved on review below are affirmed.

B. M. SMITH, Senior Judge

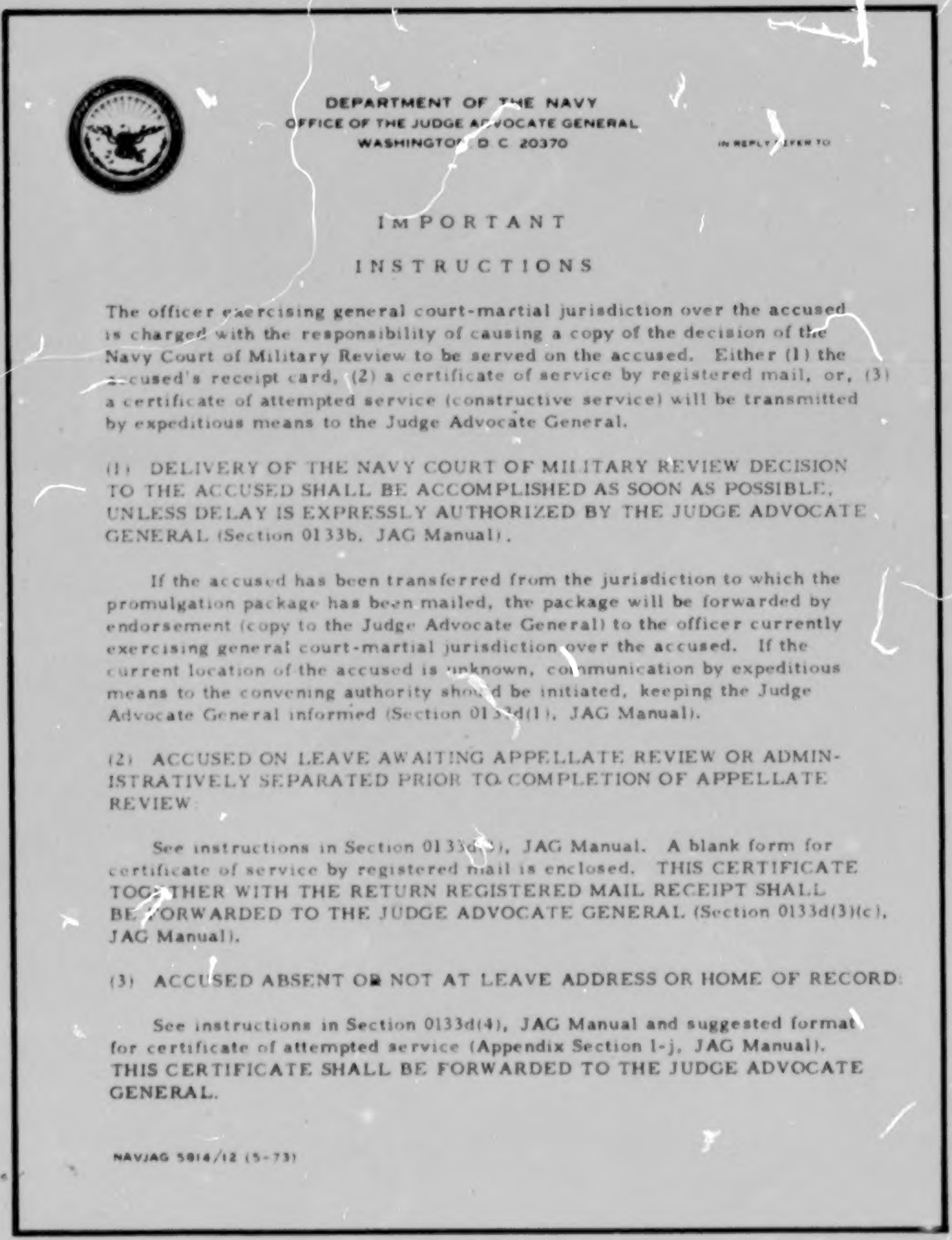
A. O. BROWN, Judge

E. L. HALTMAN, Judge

COPY FOR GCM AUTHORITY - ACTION COPY

192.70

Figure 9-22.—GCM authority copy of CMR decision showing date decision was served on accused.



DEPARTMENT OF THE NAVY
OFFICE OF THE JUDGE ADVOCATE GENERAL
WASHINGTON D C 20370

IN REPLY REFER TO

IMPORTANT

INSTRUCTIONS

The officer exercising general court-martial jurisdiction over the accused is charged with the responsibility of causing a copy of the decision of the Navy Court of Military Review to be served on the accused. Either (1) the accused's receipt card, (2) a certificate of service by registered mail, or, (3) a certificate of attempted service (constructive service) will be transmitted by expeditious means to the Judge Advocate General.

(1) DELIVERY OF THE NAVY COURT OF MILITARY REVIEW DECISION TO THE ACCUSED SHALL BE ACCOMPLISHED AS SOON AS POSSIBLE, UNLESS DELAY IS EXPRESSLY AUTHORIZED BY THE JUDGE ADVOCATE GENERAL (Section 0133b, JAG Manual).

If the accused has been transferred from the jurisdiction to which the promulgation package has been mailed, the package will be forwarded by endorsement (copy to the Judge Advocate General) to the officer currently exercising general court-martial jurisdiction over the accused. If the current location of the accused is unknown, communication by expeditious means to the convening authority should be initiated, keeping the Judge Advocate General informed (Section 0133d(1), JAG Manual).

(2) ACCUSED ON LEAVE AWAITING APPELLATE REVIEW OR ADMINISTRATIVELY SEPARATED PRIOR TO COMPLETION OF APPELLATE REVIEW:

See instructions in Section 0133d(3), JAG Manual. A blank form for certificate of service by registered mail is enclosed. THIS CERTIFICATE TOGETHER WITH THE RETURN REGISTERED MAIL RECEIPT SHALL BE FORWARDED TO THE JUDGE ADVOCATE GENERAL (Section 0133d(3)(c), JAG Manual).

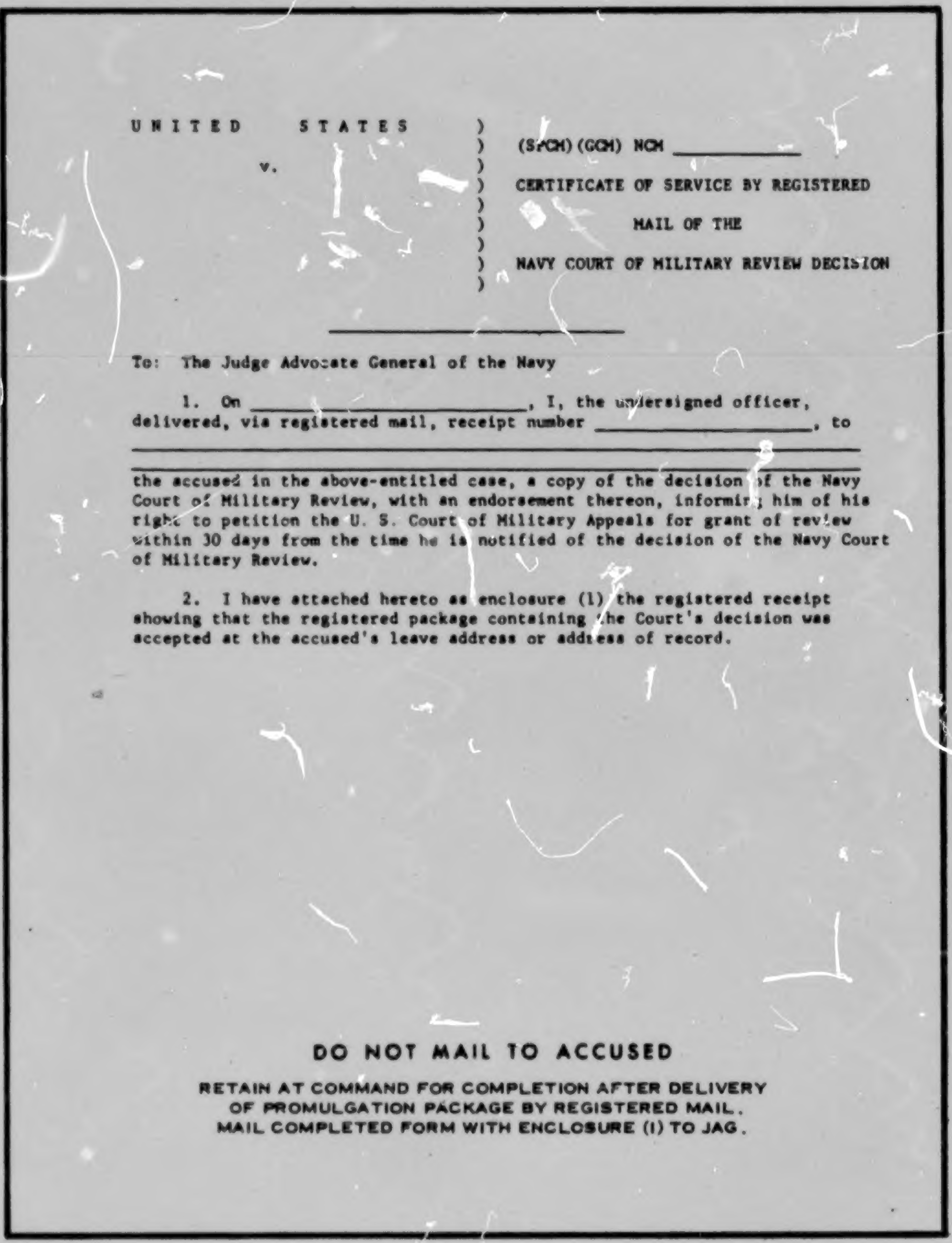
(3) ACCUSED ABSENT OR NOT AT LEAVE ADDRESS OR HOME OF RECORD:

See instructions in Section 0133d(4), JAG Manual and suggested format for certificate of attempted service (Appendix Section 1-j, JAG Manual). THIS CERTIFICATE SHALL BE FORWARDED TO THE JUDGE ADVOCATE GENERAL.

NAVJAG 5814/12 (5-73)

192.71

Figure 9-23.—Instructions for processing promulgation package.



UNITED STATES )
v. ) (SPCM) (GCM) NCM ____________

CERTIFICATE OF SERVICE BY REGISTERED
MAIL OF THE
NAVY COURT OF MILITARY REVIEW DECISION

To: The Judge Advocate General of the Navy

1. On ______________________, I, the undersigned officer, delivered, via registered mail, receipt number ____________________, to ______________________________________________ ______________________________________________ the accused in the above-entitled case, a copy of the decision of the Navy Court of Military Review, with an endorsement thereon, informing him of his right to petition the U. S. Court of Military Appeals for grant of review within 30 days from the time he is notified of the decision of the Navy Court of Military Review.

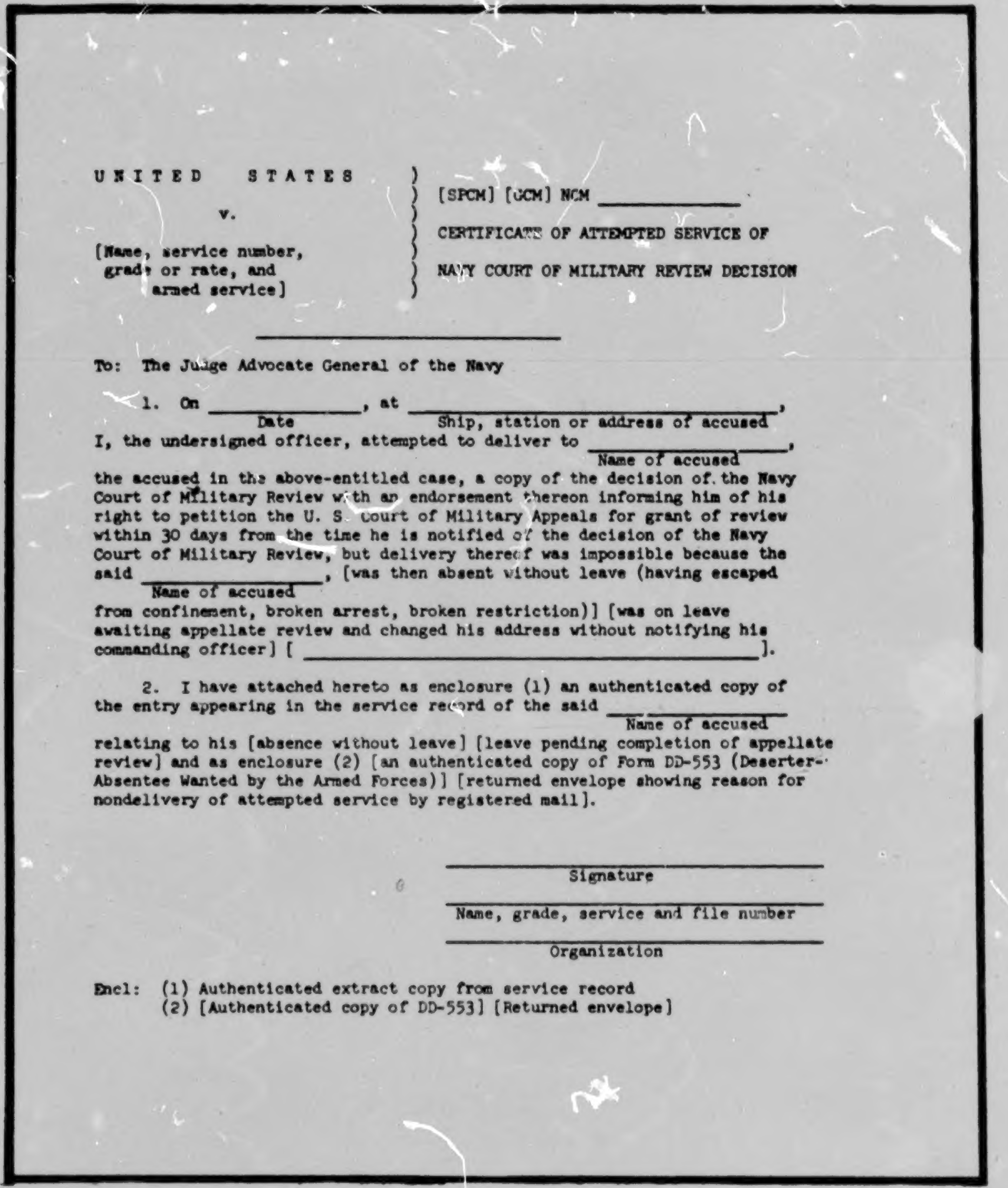
2. I have attached hereto as enclosure (1) the registered receipt showing that the registered package containing the Court's decision was accepted at the accused's leave address or address of record.

**DO NOT MAIL TO ACCUSED**

**RETAIN AT COMMAND FOR COMPLETION AFTER DELIVERY OF PROMULGATION PACKAGE BY REGISTERED MAIL. MAIL COMPLETED FORM WITH ENCLOSURE (I) TO JAG.**

192.72

Figure 9-24.—Certificate of service by registered mail.



UNITED STATES )
) [SPCM] [GCM] NCM ____________
v. )
) CERTIFICATE OF ATTEMPTED SERVICE OF
[Name, service number, )
grade or rate, and ) NAVY COURT OF MILITARY REVIEW DECISION
armed service] )

---

To: The Judge Advocate General of the Navy

1. On ______________, at ______________________________,
Date / Ship, station or address of accused

I, the undersigned officer, attempted to deliver to ______________,
Name of accused

the accused in the above-entitled case, a copy of the decision of the Navy Court of Military Review with an endorsement thereon informing him of his right to petition the U. S. Court of Military Appeals for grant of review within 30 days from the time he is notified of the decision of the Navy Court of Military Review, but delivery thereof was impossible because the said ______________, [was then absent without leave (having escaped
Name of accused

from confinement, broken arrest, broken restriction)] [was on leave awaiting appellate review and changed his address without notifying his commanding officer] [______________________________].

2. I have attached hereto as enclosure (1) an authenticated copy of the entry appearing in the service record of the said ______________
Name of accused

relating to his [absence without leave] [leave pending completion of appellate review] and as enclosure (2) [an authenticated copy of Form DD-553 (Deserter-Absentee Wanted by the Armed Forces)] [returned envelope showing reason for nondelivery of attempted service by registered mail].

______________________________
Signature

______________________________
Name, grade, service and file number

______________________________
Organization

Encl: (1) Authenticated extract copy from service record
(2) [Authenticated copy of DD-553] [Returned envelope]

192.73

Figure 9-25.—Certificate of attempted service.

accused relating to his UA, his administrative separation, or authorized leave granted in accordance with *BUPERSMAN* 3420280; (2) an authenticated copy of DD Form 553 (Deserter-Absentee Wanted by the Armed Forces), if issued; or (3) the returned envelope showing the reason for nondelivery of the attempted service by registered mail.

The certificate of attempted service is distributed as follows: (1) two copies are forwarded to the Judge Advocate General; (2) one copy is forwarded to the Chief of Naval Personnel or the Commandant of the Marine Corps, as appropriate; and (3) two copies are retained by the OEGCMJ over the accused.

If, after unsuccessful service of the CMR decision and execution of the certificate of attempted service, the accused who has been UA returns to his ship or station, or in the case of an accused granted leave as discussed above, he advises his CO of his correct address within the 30-day appeal period, a copy of the promulgation package and a copy of the certificate of attempted service must be served upon him. If the accused returns from UA to a naval activity other than his own ship or station, the promulgation package and a copy of the certificate of attempted service must be transmitted promptly to that activity for personal service upon him. In either case the required endorsement notifying the accused of his right to petition the U.S. Court of Military Appeals should be modified to inform him that his appeal period is limited to 30 days from the date of the certificate of attempted service. A receipt from the accused for his copy of the decision of the CMR and for the certificate of attempted service must be obtained and forwarded to the Judge Advocate General.

### Constructive Service

Constructive service of the CMR decision constitutes notification to the accused of the decision of the Navy Court of Military Review and commences the running of the 30-day appeal period in which he may petition the U.S. Court of Military Appeals for a grant of review. At the termination of the 30-day appeal period, action may be taken in the same manner as though the accused had been served personally or by registered mail on the date of the execution of the certificate of attempted service.

## VACATION OF SUSPENDED SENTENCES

What is a "suspended" sentence? How do you "vacate" a suspended sentence? To help you understand the answers to these questions, a look at the following definitions is necessary:

- Suspension—When a convening or reviewing authority holds in abeyance for a stated period of time all or any part of a sentence awarded by a court-martial thereby putting the accused on probation.
- Vacation of Suspension—Removing the suspension previously given the accused which then results in his serving the punishment for which he had previously been put on probation.

At the time the convening authority approves a sentence by court-martial, he may suspend for a stated period of time the execution of all or any part of it except a sentence of death. The purpose of suspending the execution of a sentence is to grant the accused a probationary period within which he may, by refraining from further misconduct, earn the remission of his sentence. The period of suspension should not be unreasonably long and may not extend beyond the current enlistment or period of service of the accused. The convening authority should suspend the whole of a sentence, except death, when it appears to him that this action will promote discipline and aid in the rehabilitation of the accused. When the convening authority suspends all or a portion of the sentence, he is actually giving the accused a second chance while at the same time encouraging him to cooperate and aid in his rehabilitation. As long as the accused stays out of trouble, the suspension is valid. What happens when the accused is again involved in misconduct? If the period of the suspension has not expired, the CA may vacate the suspension which would require the accused to serve the sentence previously suspended.

**Authority and Procedures**

The authority and procedures for vacating suspended sentences vary according to the type of court involved and the sentence adjudged, as noted in the following discussion.

AUTHORITY TO VACATE (SCM/Non-BCD SPCM).–In SCM's or SPCM's not involving an approved bad-conduct discharge, the suspension may be vacated by the commanding officer of the command in which the probationer is serving or assigned IF that CO has authority to convene the same type of court that imposed the sentence.

PROCEDURE.–At present no formal procedure is involved. The CO may simply direct that the suspension be vacated. No hearing on the matter is currently required. However, vacation of a suspension is usually accomplished at mast after a hearing has been conducted. More formal hearings may be instituted as a result of recent U.S. Supreme Court decisions affecting parole and probation revocation in the civilian sector of law enforcement.

AUTHORITY TO VACATE (GCM/BCD SPCM).–In GCM's and SPCM's involving an approved bad-conduct discharge, the officer having SPCM jurisdiction over the probationer may, after a hearing has been held on the matter, recommend that the suspension be vacated. The officer exercising GCM jurisdiction over the probationer to which the recommendation and record of the hearing is forwarded may vacate the suspension and order the suspended portion of the sentence executed. There are a few exceptions when the OEGCMJ may vacate the suspension but may not order the suspended portion executed, which will be discussed later. If the officer initiating the vacation proceedings has GCM jurisdiction over the accused, he may vacate the suspension without approval of any higher authority.

PROCEDURE.–The officer exercising SPCM jurisdiction (OESPCMJ) over the probationer has a hearing conducted on the alleged violation of probation. He may hold the entire hearing himself or designate an officer to conduct a preliminary hearing subject to a review by himself. If the preliminary hearing method is used, the probationer, at the review before the OESPCMJ, must be given an opportunity to examine the report of the preliminary hearing, to make objections to it, if any, and to submit additional matter in extenuation, mitigation, or defense. Regardless of whether the OESPCMJ conducts the entire hearing himself or has a preliminary hearing conducted by another officer, the entire hearing must be conducted in the presence of the probationer. The probationer has the right to have certified counsel present at both the preliminary hearing, if held, and the hearing before the OESPCMJ.

**Action of OESPCMJ**

After the hearing is over, the OESPCMJ either forwards the report to vacate suspension to the GCM authority with a recommendation that the suspension be vacated and the suspended portion of the sentence be executed, or he files the proceedings to vacate suspension without action. The accused may then be tried on the new charges.

**Action of OEGCMJ**

The OEGCMJ acts on the report and recommendation by either vacating the suspension or dropping the proceedings to vacate. If he vacates the suspension, he must also order the suspended portion of the sentence executed, with the following exceptions:

(1) dismissal of an officer may not be executed until the Secretary of the Navy approves the vacation; and

(2) a BCD, DD, or confinement for one year or more may not be executed until appellate review has been completed on the record of trial that imposed the sentence which was later suspended in whole or in part. However, the OEGCMJ may vacate the suspension and provide in his action that the sentence be executed on completion of appellate review.

If the OEGCMJ vacates the suspension he must inform the probationer's commanding officer of his action and issue a promulgating order.

A copy of the promulgating order, along with a copy of the record of the hearing, must be forwarded to the Judge Advocate General. Use of a short letter of transmittal is recommended in forwarding the copy of the record to JAG. See Appendix 15c and 15e, *MCM*, for forms for orders to be used in the promulgating order.

### Record of Proceedings to Vacate Suspension

The record of proceedings to vacate suspension is prepared on DD Form 455. Figure 9-26 is an illustration of a completed report.

### Other Matters Relating to Vacation of Suspension

The suspension must be vacated prior to the end of the period of the suspension. That is, if the suspension is for a period of six months, and is to be vacated, proceedings to vacate must be commenced within the six month period. Note, however, that an accused's unauthorized absence, during the period of the suspension, tolls the running of the period of the suspension. That is, if an accused absents himself without authority during the period of suspension, the period of suspension does not run during this absence. The running of the period of suspension resumes, however, upon his return and, thereafter, if the suspension is to be vacated, it must, as stated above, be vacated within the period of the suspension. If the sentence suspended is of an SCM or SPCM not including a BCD, while an accused's unauthorized absence tolls the running of the period of suspension, the suspension may be vacated prior to his return since, presently, no vacation hearing requiring the accused's presence is required in these cases.

One act of misconduct may be grounds for both vacating the suspension of a previous sentence and trial by court-martial for the new misconduct.

## CLEMENCY

What is clemency? Clemency may be defined as "that action, other than correction of a legal error, which results in the mitigation, remission, or suspension of the whole, or any part, of the unexecuted portion of a sentence, restoration to duty, and when applicable, the full or partial restoration of grade."

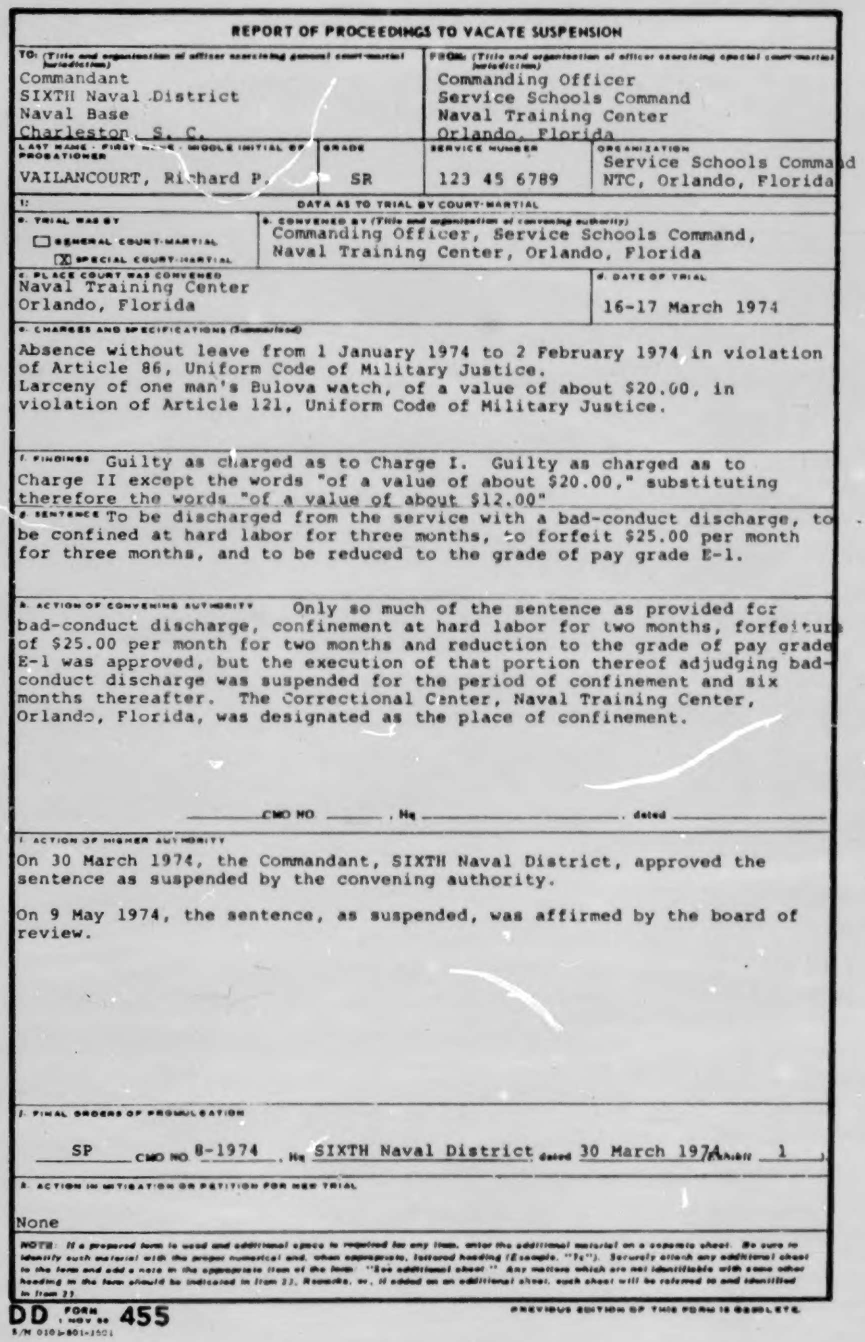
### Recommendation For Clemency

Where an accused is convicted, an important posttrial duty of the defense counsel is to prepare, in a proper case, a recommendation for clemency. The recommendation is made to the convening authority. However, since the recommendation is attached to the trial record, it can be considered by any reviewing authority who has the power to act upon the recommendation, e.g., supervisory authority, court of review. The defense counsel usually initiates the recommendation for clemency. However, it may be initiated by a court member.

Mitigating circumstances which could not be taken into consideration in determining the sentence may be a basis for a recommendation for clemency, or the court members may wish to recommend that the convening authority suspend the sentence since the court has no power to award a suspended sentence. The recommendation should be specific as to the reasons for the recommendation. A recommendation for clemency should never be based upon a doubt as to the accused's guilt.

### Naval Clemency and Parole Board

The Naval Clemency and Parole Board was established by the Secretary of the Navy to make appropriate recommendations in the cases of Navy and Marine Corps personnel eligible for clemency consideration. The board is composed of representatives of the Commandant of the Marine Corps, the Chief of Naval Personnel, the Judge Advocate General, the Chief, Bureau of Medicine and Surgery, and the Navy Council of Personnel Boards. The board bases its recommendations on the background of the individual concerned—his civil and military history, his adjustment in confinement or while awaiting completion of appellate review if not confined, motivation for future service, the nature and circumstances of the offense(s), the recommendation of the commanding officer, and the recommendation of the CMC or CHNAVPERS.



**REPORT OF PROCEEDINGS TO VACATE SUSPENSION**

TO: (Title and organization of officer exercising general court-martial jurisdiction)
Commandant
SIXTH Naval District
Naval Base
Charleston, S. C.

FROM: (Title and organization of officer exercising special court-martial jurisdiction)
Commanding Officer
Service Schools Command
Naval Training Center
Orlando, Florida

| LAST NAME - FIRST NAME - MIDDLE INITIAL OF PROBATIONER | GRADE | SERVICE NUMBER | ORGANIZATION |
|---|---|---|---|
| VAILANCOURT, Richard P. | SR | 123 45 6789 | Service Schools Command<br>NTC, Orlando, Florida |

1. DATA AS TO TRIAL BY COURT-MARTIAL

a. TRIAL WAS BY
☐ GENERAL COURT-MARTIAL
☒ SPECIAL COURT-MARTIAL

b. CONVENED BY (Title and organization of convening authority)
Commanding Officer, Service Schools Command,
Naval Training Center, Orlando, Florida

c. PLACE COURT WAS CONVENED
Naval Training Center
Orlando, Florida

d. DATE OF TRIAL
16-17 March 1974

e. CHARGES AND SPECIFICATIONS (Summarized)
Absence without leave from 1 January 1974 to 2 February 1974 in violation of Article 86, Uniform Code of Military Justice.
Larceny of one man's Bulova watch, of a value of about $20.00, in violation of Article 121, Uniform Code of Military Justice.

f. FINDINGS Guilty as charged as to Charge I. Guilty as charged as to Charge II except the words "of a value of about $20.00," substituting therefore the words "of a value of about $12.00"

g. SENTENCE To be discharged from the service with a bad-conduct discharge, to be confined at hard labor for three months, to forfeit $25.00 per month for three months, and to be reduced to the grade of pay grade E-1.

h. ACTION OF CONVENING AUTHORITY Only so much of the sentence as provided for bad-conduct discharge, confinement at hard labor for two months, forfeiture of $25.00 per month for two months and reduction to the grade of pay grade E-1 was approved, but the execution of that portion thereof adjudging bad-conduct discharge was suspended for the period of confinement and six months thereafter. The Correctional Center, Naval Training Center, Orlando, Florida, was designated as the place of confinement.

______ CMO NO ______, Hq ______, dated ______

i. ACTION OF HIGHER AUTHORITY
On 30 March 1974, the Commandant, SIXTH Naval District, approved the sentence as suspended by the convening authority.

On 9 May 1974, the sentence, as suspended, was affirmed by the board of review.

j. FINAL ORDERS OF PROMULGATION
SP CMO NO 8-1974, Hq SIXTH Naval District dated 30 March 1974 (Exhibit 1).

k. ACTION IN MITIGATION OR PETITION FOR NEW TRIAL
None

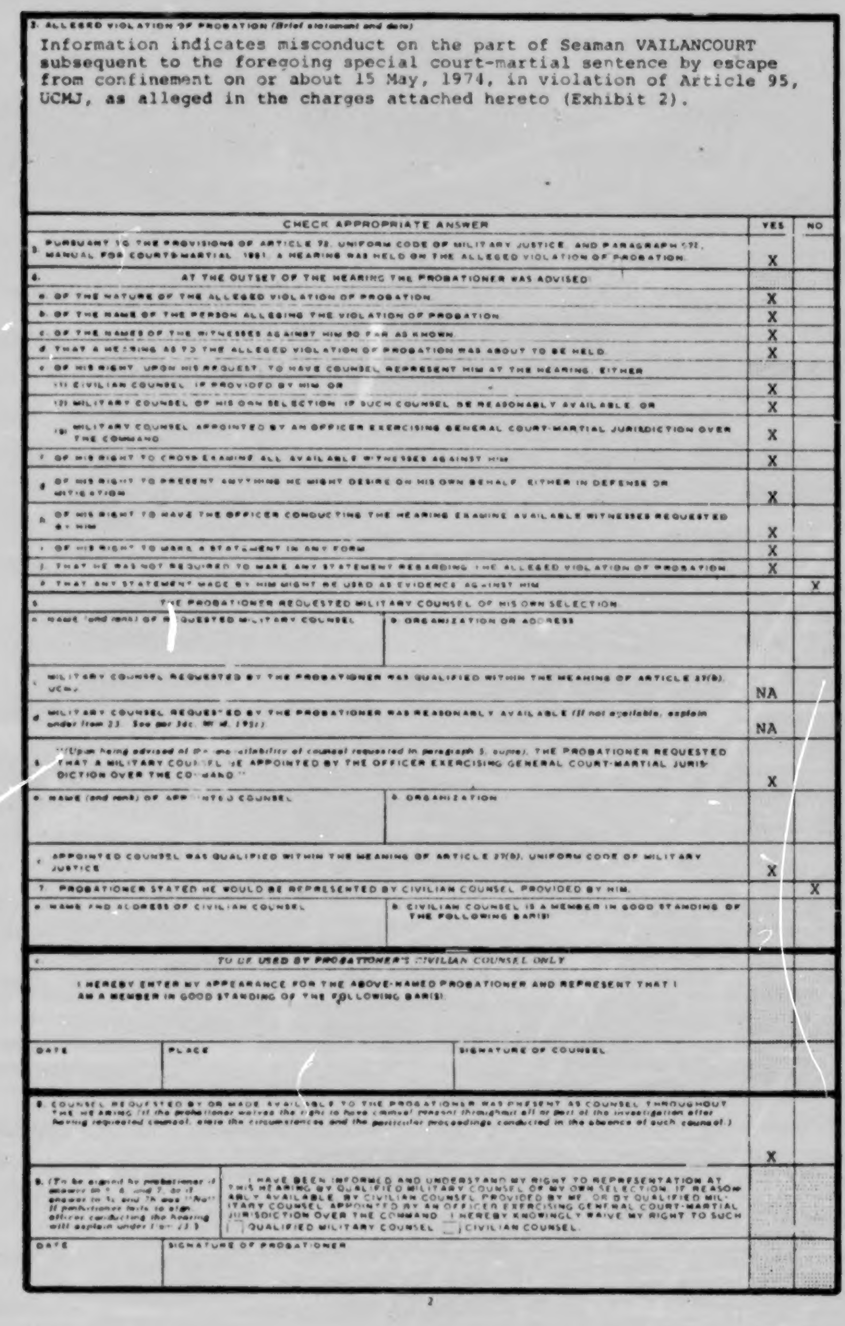
NOTE: If a prepared form is used and additional space is required for any item, enter the additional material on a separate sheet. Be sure to identify such material with the proper numerical and, when appropriate, lettered heading (Example: "1c"). Securely attach any additional sheet to the form and add a note in the appropriate item of the form: "See additional sheet." Any matters which are not identifiable with some other heading in the form should be indicated in item 11, Remarks, or, if added on an additional sheet, such sheet will be referred to and identified in item 11.

DD FORM 1 NOV 50 455
S/N 0102-801-1501

PREVIOUS EDITION OF THIS FORM IS OBSOLETE.

192.74.1

Figure 9-26.—Report of proceedings to vacate suspension.



2. ALLEGED VIOLATION OF PROBATION *(Brief statement and date)*

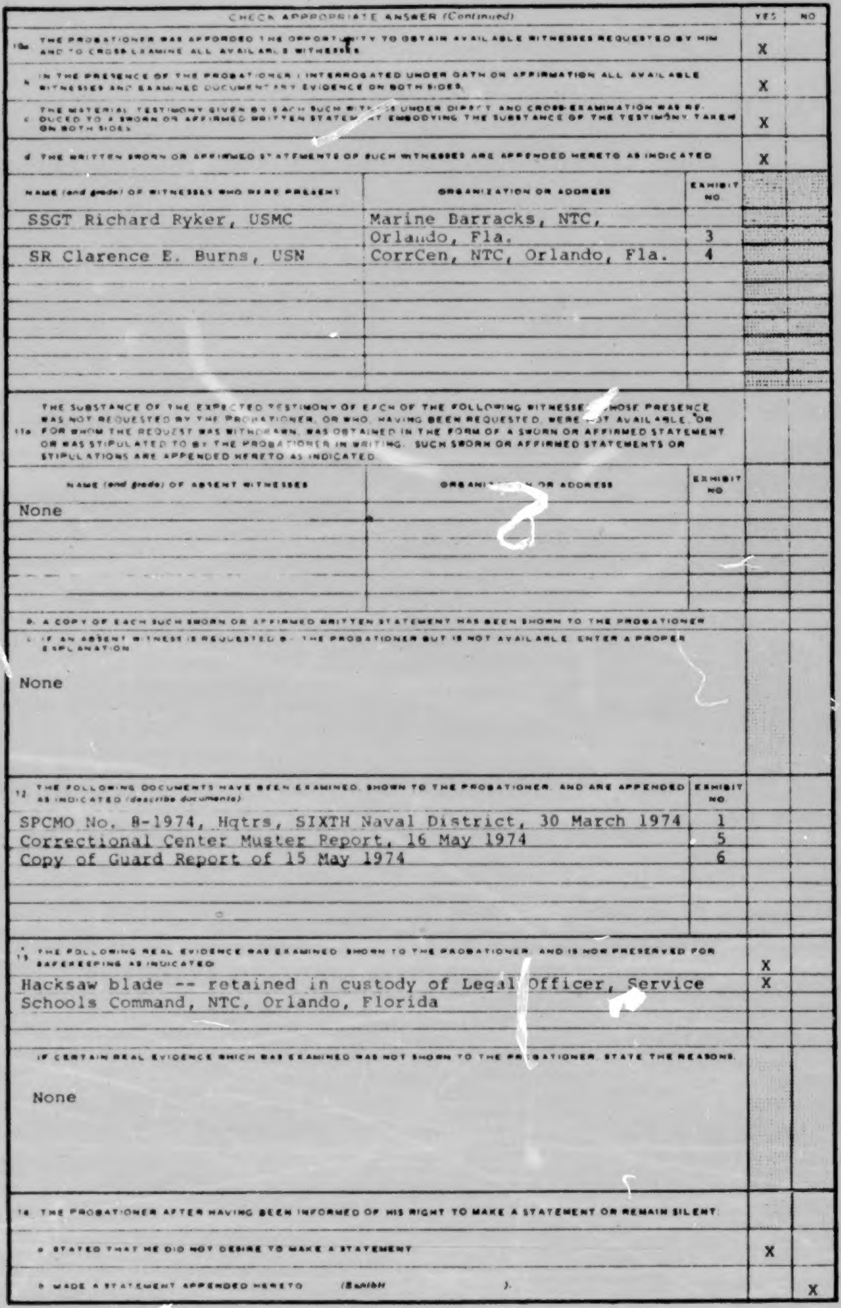
Information indicates misconduct on the part of Seaman VAILANCOURT subsequent to the foregoing special court-martial sentence by escape from confinement on or about 15 May, 1974, in violation of Article 95, UCMJ, as alleged in the charges attached hereto (Exhibit 2).

| CHECK APPROPRIATE ANSWER | YES | NO |
|---|---|---|
| 3. PURSUANT TO THE PROVISIONS OF ARTICLE 72, UNIFORM CODE OF MILITARY JUSTICE, AND PARAGRAPH 97b, MANUAL FOR COURTS-MARTIAL, 1951, A HEARING WAS HELD ON THE ALLEGED VIOLATION OF PROBATION. | X | |
| 4. AT THE OUTSET OF THE HEARING THE PROBATIONER WAS ADVISED: | | |
| a. OF THE NATURE OF THE ALLEGED VIOLATION OF PROBATION | X | |
| b. OF THE NAME OF THE PERSON ALLEGING THE VIOLATION OF PROBATION | X | |
| c. OF THE NAMES OF THE WITNESSES AGAINST HIM SO FAR AS KNOWN | X | |
| d. THAT A HEARING AS TO THE ALLEGED VIOLATION OF PROBATION WAS ABOUT TO BE HELD | X | |
| e. OF HIS RIGHT, UPON HIS REQUEST, TO HAVE COUNSEL REPRESENT HIM AT THE HEARING, EITHER | | |
| (1) CIVILIAN COUNSEL, IF PROVIDED BY HIM, OR | X | |
| (2) MILITARY COUNSEL OF HIS OWN SELECTION, IF SUCH COUNSEL BE REASONABLY AVAILABLE, OR | X | |
| (3) MILITARY COUNSEL APPOINTED BY AN OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION OVER THE COMMAND | X | |
| f. OF HIS RIGHT TO CROSS-EXAMINE ALL AVAILABLE WITNESSES AGAINST HIM | X | |
| g. OF HIS RIGHT TO PRESENT ANYTHING HE MIGHT DESIRE ON HIS OWN BEHALF, EITHER IN DEFENSE OR MITIGATION | X | |
| h. OF HIS RIGHT TO HAVE THE OFFICER CONDUCTING THE HEARING EXAMINE AVAILABLE WITNESSES REQUESTED BY HIM | X | |
| i. OF HIS RIGHT TO MAKE A STATEMENT IN ANY FORM | X | |
| j. THAT HE WAS NOT REQUIRED TO MAKE ANY STATEMENT REGARDING THE ALLEGED VIOLATION OF PROBATION | X | |
| k. THAT ANY STATEMENT MADE BY HIM MIGHT BE USED AS EVIDENCE AGAINST HIM | | X |
| 5. THE PROBATIONER REQUESTED MILITARY COUNSEL OF HIS OWN SELECTION | | |
| a. NAME (and rank) OF REQUESTED MILITARY COUNSEL<br>b. ORGANIZATION OR ADDRESS | | |
| c. MILITARY COUNSEL REQUESTED BY THE PROBATIONER WAS QUALIFIED WITHIN THE MEANING OF ARTICLE 27(b), UCMJ | NA | |
| d. MILITARY COUNSEL REQUESTED BY THE PROBATIONER WAS REASONABLY AVAILABLE *(If not available, explain under Item 23. See par 34c, MCM, 1951)* | NA | |
| 6. "*(Upon being advised of the unavailability of counsel requested in paragraph 5, supra)*, THE PROBATIONER REQUESTED THAT A MILITARY COUNSEL BE APPOINTED BY THE OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION OVER THE COMMAND." | X | |
| a. NAME (and rank) OF APPOINTED COUNSEL<br>b. ORGANIZATION | | |
| c. APPOINTED COUNSEL WAS QUALIFIED WITHIN THE MEANING OF ARTICLE 27(b), UNIFORM CODE OF MILITARY JUSTICE | X | |
| 7. PROBATIONER STATED HE WOULD BE REPRESENTED BY CIVILIAN COUNSEL PROVIDED BY HIM. | | X |
| a. NAME AND ADDRESS OF CIVILIAN COUNSEL<br>b. CIVILIAN COUNSEL IS A MEMBER IN GOOD STANDING OF THE FOLLOWING BAR(S) | | |
| c. *TO BE USED BY PROBATIONER'S CIVILIAN COUNSEL ONLY* | | |
| I HEREBY ENTER MY APPEARANCE FOR THE ABOVE-NAMED PROBATIONER AND REPRESENT THAT I AM A MEMBER IN GOOD STANDING OF THE FOLLOWING BAR(S) | | |
| DATE<br>PLACE<br>SIGNATURE OF COUNSEL | | |
| 8. COUNSEL REQUESTED BY OR MADE AVAILABLE TO THE PROBATIONER WAS PRESENT AS COUNSEL THROUGHOUT THE HEARING *(If the probationer waives the right to have counsel present throughout all or part of the investigation after having requested counsel, state the circumstances and the particular proceedings conducted in the absence of such counsel.)* | X | |
| 9. *(To be signed by probationer if answer in 5, 6, and 7, or if answer in 5c and 7b was "No". If probationer fails to sign, officer conducting the hearing will explain under Item 23.)*<br>I HAVE BEEN INFORMED AND UNDERSTAND MY RIGHT TO REPRESENTATION AT THIS HEARING BY QUALIFIED MILITARY COUNSEL OF MY OWN SELECTION, IF REASONABLY AVAILABLE, BY CIVILIAN COUNSEL PROVIDED BY ME, OR BY QUALIFIED MILITARY COUNSEL APPOINTED BY AN OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION OVER THE COMMAND. I HEREBY KNOWINGLY WAIVE MY RIGHT TO SUCH ☐ QUALIFIED MILITARY COUNSEL ☐ CIVILIAN COUNSEL. | | |
| DATE<br>SIGNATURE OF PROBATIONER | | |

2

192.74.2

Figure 9-26.—Report of proceedings to vacate suspension—(Continued) (Page 2)



| CHECK APPROPRIATE ANSWER *(Continued)* | YES | NO |
|---|---|---|
| 10a THE PROBATIONER WAS AFFORDED THE OPPORTUNITY TO OBTAIN AVAILABLE WITNESSES REQUESTED BY HIM AND TO CROSS-EXAMINE ALL AVAILABLE WITNESSES | X | |
| b IN THE PRESENCE OF THE PROBATIONER I INTERROGATED UNDER OATH OR AFFIRMATION ALL AVAILABLE WITNESSES AND EXAMINED DOCUMENTARY EVIDENCE ON BOTH SIDES. | X | |
| c THE MATERIAL TESTIMONY GIVEN BY EACH SUCH WITNESS UNDER DIRECT AND CROSS-EXAMINATION WAS REDUCED TO A SWORN OR AFFIRMED WRITTEN STATEMENT EMBODYING THE SUBSTANCE OF THE TESTIMONY TAKEN ON BOTH SIDES | X | |
| d THE WRITTEN SWORN OR AFFIRMED STATEMENTS OF SUCH WITNESSES ARE APPENDED HERETO AS INDICATED | X | |

| NAME *(and grade)* OF WITNESSES WHO WERE PRESENT | ORGANIZATION OR ADDRESS | EXHIBIT NO |
|---|---|---|
| SSGT Richard Ryker, USMC | Marine Barracks, NTC, | |
| | Orlando, Fla. | 3 |
| SR Clarence E. Burns, USN | CorrCen, NTC, Orlando, Fla. | 4 |

11a THE SUBSTANCE OF THE EXPECTED TESTIMONY OF EACH OF THE FOLLOWING WITNESSES WHOSE PRESENCE WAS NOT REQUESTED BY THE PROBATIONER, OR WHO, HAVING BEEN REQUESTED, WERE NOT AVAILABLE, OR FOR WHOM THE REQUEST WAS WITHDRAWN, WAS OBTAINED IN THE FORM OF A SWORN OR AFFIRMED STATEMENT OR WAS STIPULATED TO BY THE PROBATIONER IN WRITING. SUCH SWORN OR AFFIRMED STATEMENTS OR STIPULATIONS ARE APPENDED HERETO AS INDICATED

| NAME *(and grade)* OF ABSENT WITNESSES | ORGANIZATION OR ADDRESS | EXHIBIT NO |
|---|---|---|
| None | | |

b. A COPY OF EACH SUCH SWORN OR AFFIRMED WRITTEN STATEMENT HAS BEEN SHOWN TO THE PROBATIONER

c. IF AN ABSENT WITNESS IS REQUESTED BY THE PROBATIONER BUT IS NOT AVAILABLE, ENTER A PROPER EXPLANATION

None

| 12 THE FOLLOWING DOCUMENTS HAVE BEEN EXAMINED, SHOWN TO THE PROBATIONER, AND ARE APPENDED AS INDICATED *(describe documents)* | EXHIBIT NO |
|---|---|
| SPCMO No. 8-1974, Hqtrs, SIXTH Naval District, 30 March 1974 | 1 |
| Correctional Center Muster Report, 16 May 1974 | 5 |
| Copy of Guard Report of 15 May 1974 | 6 |

| | YES | NO |
|---|---|---|
| 13 THE FOLLOWING REAL EVIDENCE WAS EXAMINED, SHOWN TO THE PROBATIONER, AND IS NOW PRESERVED FOR SAFEKEEPING AS INDICATED | X | |
| Hacksaw blade -- retained in custody of Legal Officer, Service | X | |
| Schools Command, NTC, Orlando, Florida | | |

IF CERTAIN REAL EVIDENCE WHICH WAS EXAMINED WAS NOT SHOWN TO THE PROBATIONER, STATE THE REASONS.

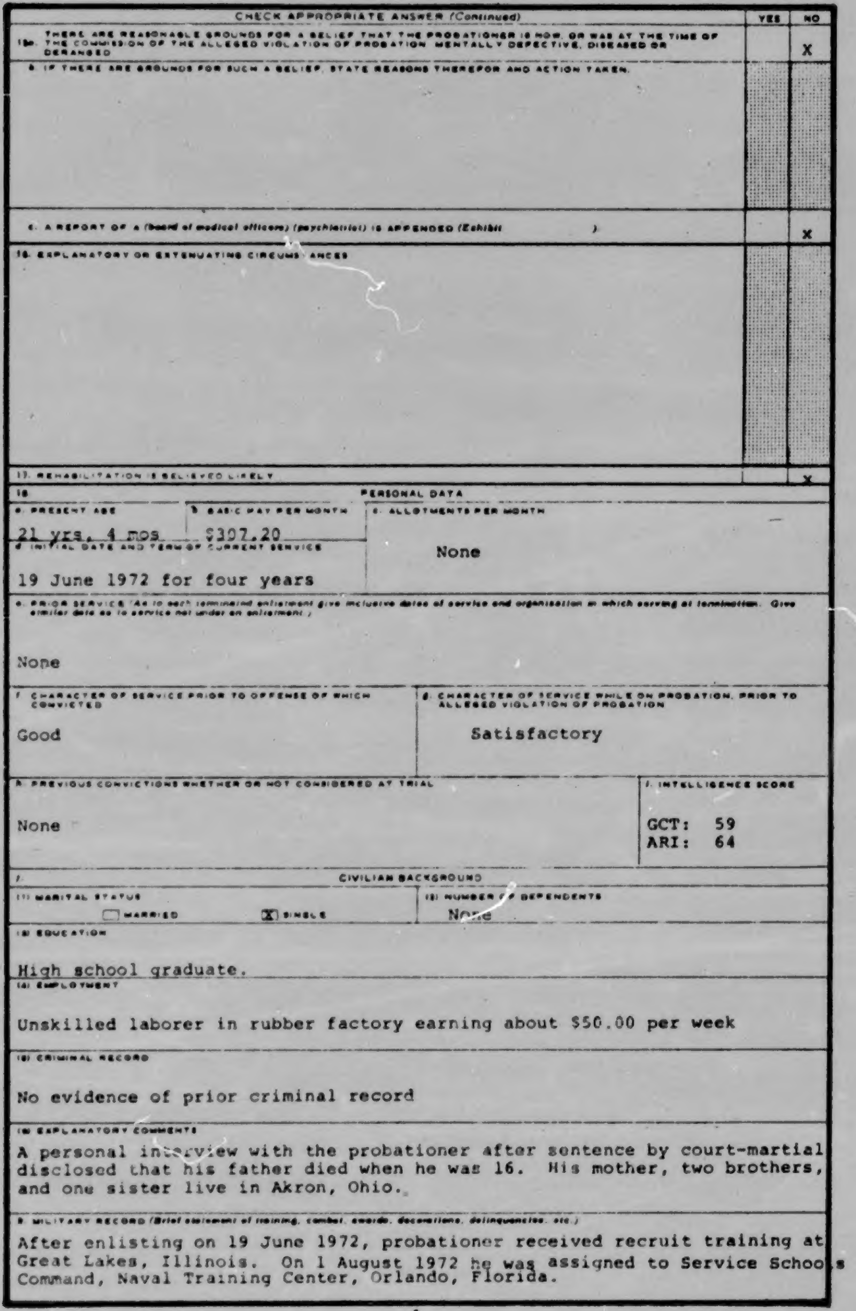
None

| | YES | NO |
|---|---|---|
| 14. THE PROBATIONER AFTER HAVING BEEN INFORMED OF HIS RIGHT TO MAKE A STATEMENT OR REMAIN SILENT: | | |
| a STATED THAT HE DID NOT DESIRE TO MAKE A STATEMENT | X | |
| b MADE A STATEMENT APPENDED HERETO *(Exhibit* ). | | X |

3

192.74.3

Figure 9-26.—Report of proceedings to vacate suspension—(Continued) (Page 3)



| CHECK APPROPRIATE ANSWER (Continued) | YES | NO |
|---|---|---|
| 15a. THERE ARE REASONABLE GROUNDS FOR A BELIEF THAT THE PROBATIONER IS NOW, OR WAS AT THE TIME OF THE COMMISSION OF THE ALLEGED VIOLATION OF PROBATION MENTALLY DEFECTIVE, DISEASED OR DERANGED |  | X |
| b. IF THERE ARE GROUNDS FOR SUCH A BELIEF, STATE REASONS THEREFOR AND ACTION TAKEN. | ▨ | ▨ |
| c. A REPORT OF A (board of medical officers) (psychiatrist) IS APPENDED (Exhibit ) |  | X |
| 16. EXPLANATORY OR EXTENUATING CIRCUMSTANCES | ▨ | ▨ |
| 17. REHABILITATION IS BELIEVED LIKELY |  | X |

18. PERSONAL DATA

a. PRESENT AGE: 21 yrs. 4 mos

b. BASIC PAY PER MONTH: $307.20

c. ALLOTMENTS PER MONTH: None

d. INITIAL DATE AND TERM OF CURRENT SERVICE: 19 June 1972 for four years

e. PRIOR SERVICE (As to each terminated enlistment give inclusive dates of service and organization in which serving at termination. Give similar data as to service not under an enlistment.)

None

f. CHARACTER OF SERVICE PRIOR TO OFFENSE OF WHICH CONVICTED: Good

g. CHARACTER OF SERVICE WHILE ON PROBATION, PRIOR TO ALLEGED VIOLATION OF PROBATION: Satisfactory

h. PREVIOUS CONVICTIONS WHETHER OR NOT CONSIDERED AT TRIAL: None

i. INTELLIGENCE SCORE:

GCT: 59
ARI: 64

j. CIVILIAN BACKGROUND

(1) MARITAL STATUS: ☐ MARRIED ☒ SINGLE

(2) NUMBER OF DEPENDENTS: None

(3) EDUCATION: High school graduate.

(4) EMPLOYMENT: Unskilled laborer in rubber factory earning about $50.00 per week

(5) CRIMINAL RECORD: No evidence of prior criminal record

(6) EXPLANATORY COMMENTS

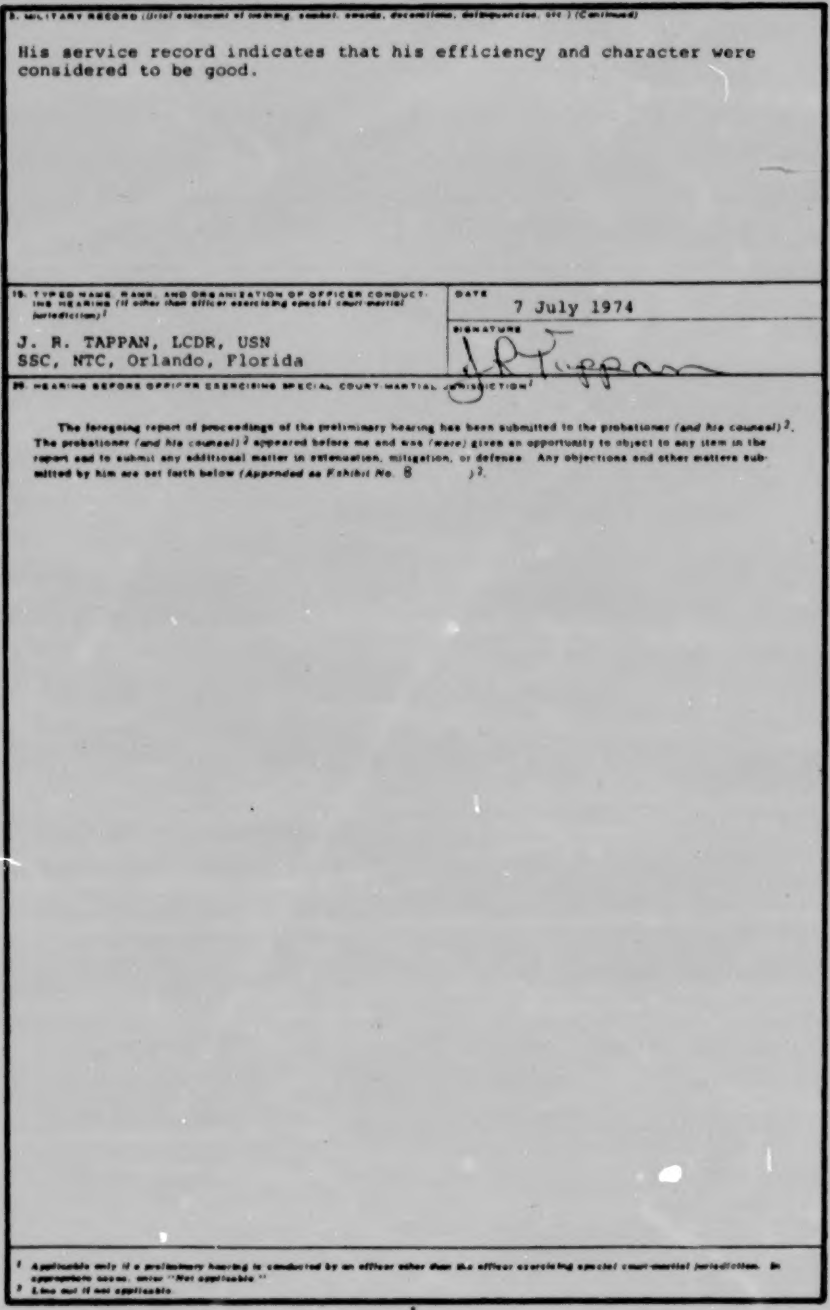
A personal interview with the probationer after sentence by court-martial disclosed that his father died when he was 16. His mother, two brothers, and one sister live in Akron, Ohio.

k. MILITARY RECORD (Brief statement of training, combat, awards, decorations, delinquencies, etc.)

After enlisting on 19 June 1972, probationer received recruit training at Great Lakes, Illinois. On 1 August 1972 he was assigned to Service Schools Command, Naval Training Center, Orlando, Florida.

Figure 9-26.—Report of proceedings to vacate suspension—(Continued) (Page 4)

192.74.4



8. MILITARY RECORD *(Brief statement of training, combat, awards, decorations, delinquencies, etc.) (Continued)*

His service record indicates that his efficiency and character were considered to be good.

19. TYPED NAME, RANK, AND ORGANIZATION OF OFFICER CONDUCTING HEARING *(If other than officer exercising special court-martial jurisdiction)*[1]

J. R. TAPPAN, LCDR, USN
SSC, NTC, Orlando, Florida

DATE 7 July 1974

SIGNATURE J R Tappan

20. HEARING BEFORE OFFICER EXERCISING SPECIAL COURT-MARTIAL JURISDICTION[1]

The foregoing report of proceedings of the preliminary hearing has been submitted to the probationer *(and his counsel)*[2]. The probationer *(and his counsel)*[2] appeared before me and was *(were)* given an opportunity to object to any item in the report and to submit any additional matter in extenuation, mitigation, or defense. Any objections and other matters submitted by him are set forth below *(Appended as Exhibit No.* 8 *)*[2].

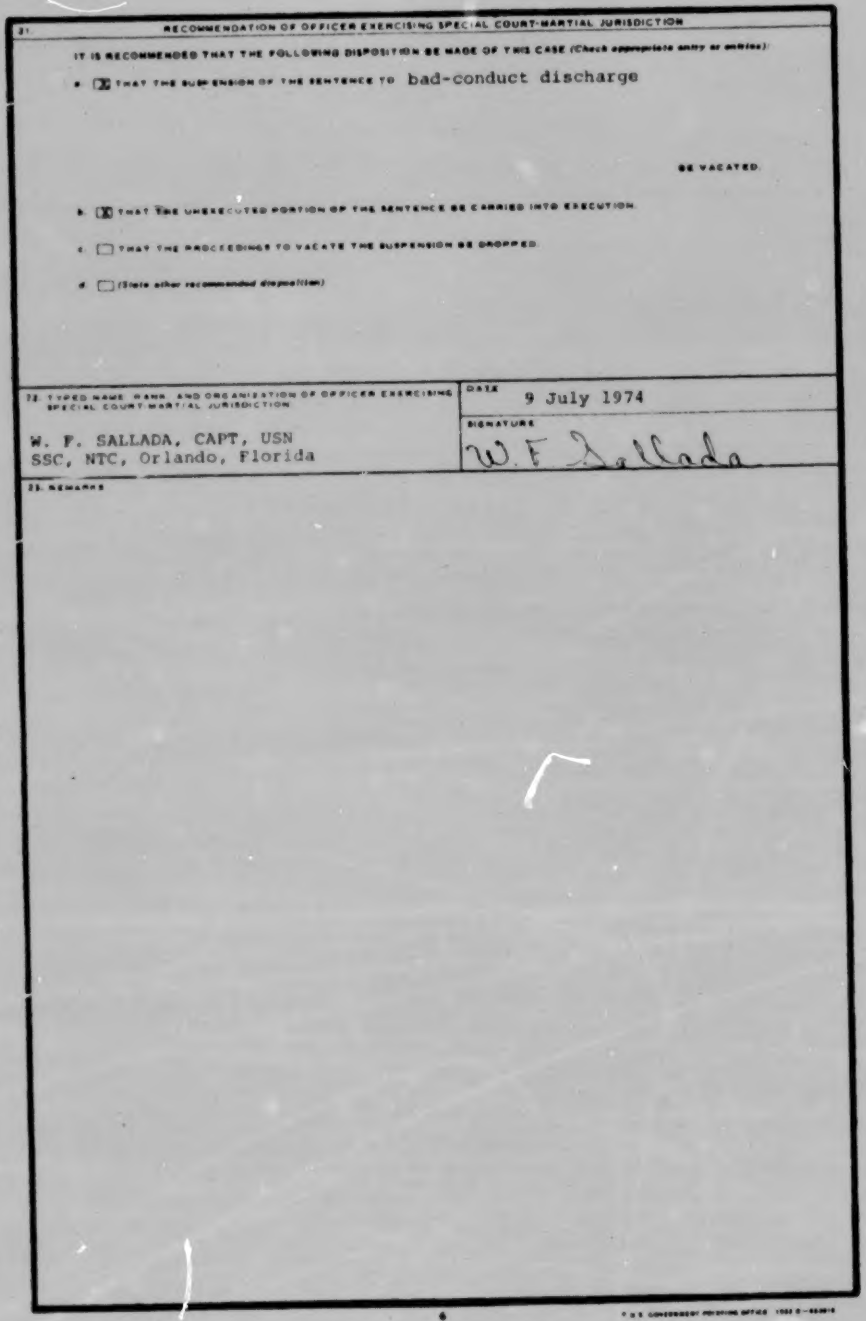
[1] Applicable only if a preliminary hearing is conducted by an officer other than the officer exercising special court-martial jurisdiction. In appropriate cases, enter "Not applicable."

[2] Line out if not applicable.

5

**Figure 9-26.—Report of proceedings to vacate suspension—(Continued) (Page 5)**

**192.74.5**



31. RECOMMENDATION OF OFFICER EXERCISING SPECIAL COURT-MARTIAL JURISDICTION

IT IS RECOMMENDED THAT THE FOLLOWING DISPOSITION BE MADE OF THIS CASE *(Check appropriate entry or entries)*

a. ☒ THAT THE SUSPENSION OF THE SENTENCE TO bad-conduct discharge

BE VACATED.

b. ☒ THAT THE UNEXECUTED PORTION OF THE SENTENCE BE CARRIED INTO EXECUTION.

c. ☐ THAT THE PROCEEDINGS TO VACATE THE SUSPENSION BE DROPPED.

d. ☐ *(State other recommended disposition)*

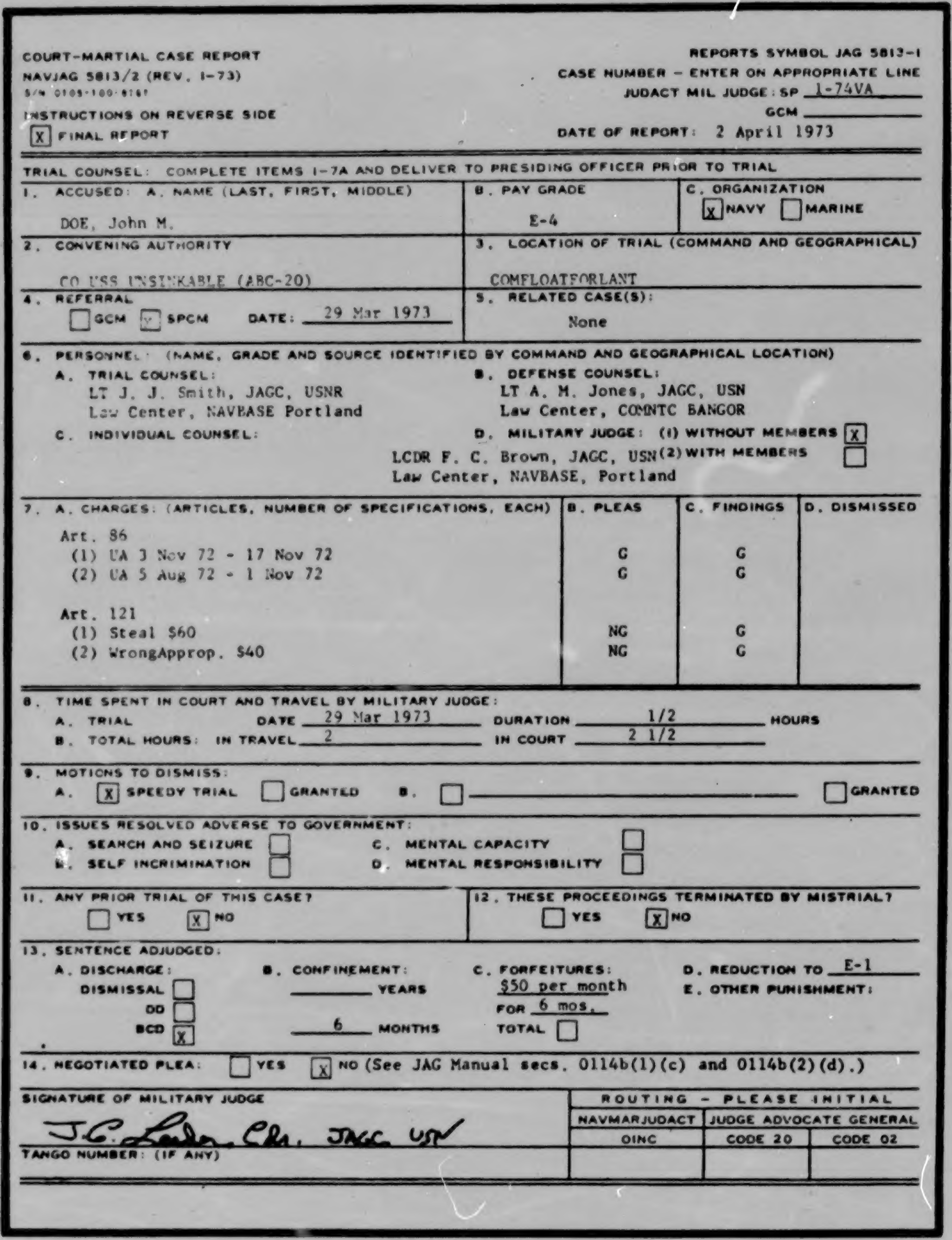
| | |
|---|---|
| 32. TYPED NAME, RANK, AND ORGANIZATION OF OFFICER EXERCISING SPECIAL COURT-MARTIAL JURISDICTION<br>W. F. SALLADA, CAPT, USN<br>SSC, NTC, Orlando, Florida | DATE 9 July 1974 |
| | SIGNATURE W. F. Sallada |

33. REMARKS

6

4

Figure 9-26.—Report of proceedings to vacate suspension—(Continued) (Page 6) 192.74.6



COURT-MARTIAL CASE REPORT
NAVJAG 5813/2 (REV. 1-73)
S/N 0105-100-8161
INSTRUCTIONS ON REVERSE SIDE
☒ FINAL REPORT

REPORTS SYMBOL JAG 5813-1
CASE NUMBER – ENTER ON APPROPRIATE LINE
JUDACT MIL JUDGE: SP 1-74VA
GCM ______
DATE OF REPORT: 2 April 1973

TRIAL COUNSEL: COMPLETE ITEMS 1-7A AND DELIVER TO PRESIDING OFFICER PRIOR TO TRIAL

1. ACCUSED: A. NAME (LAST, FIRST, MIDDLE) DOE, John M.
B. PAY GRADE E-4
C. ORGANIZATION ☒ NAVY ☐ MARINE

2. CONVENING AUTHORITY CO USS UNSINKABLE (ABC-20)

3. LOCATION OF TRIAL (COMMAND AND GEOGRAPHICAL) COMFLOATFORLANT

4. REFERRAL ☐ GCM ☒ SPCM DATE: 29 Mar 1973

5. RELATED CASE(S): None

6. PERSONNEL (NAME, GRADE AND SOURCE IDENTIFIED BY COMMAND AND GEOGRAPHICAL LOCATION)

A. TRIAL COUNSEL:
LT J. J. Smith, JAGC, USNR
Law Center, NAVBASE Portland

B. DEFENSE COUNSEL:
LT A. M. Jones, JAGC, USN
Law Center, COMNTC BANGOR

C. INDIVIDUAL COUNSEL:

D. MILITARY JUDGE: (1) WITHOUT MEMBERS ☒ (2) WITH MEMBERS ☐
LCDR F. C. Brown, JAGC, USN
Law Center, NAVBASE, Portland

| 7. A. CHARGES: (ARTICLES, NUMBER OF SPECIFICATIONS, EACH) | B. PLEAS | C. FINDINGS | D. DISMISSED |
|---|---|---|---|
| Art. 86 | | | |
| (1) UA 3 Nov 72 - 17 Nov 72 | G | G | |
| (2) UA 5 Aug 72 - 1 Nov 72 | G | G | |
| Art. 121 | | | |
| (1) Steal $60 | NG | G | |
| (2) WrongApprop. $40 | NG | G | |

8. TIME SPENT IN COURT AND TRAVEL BY MILITARY JUDGE:
A. TRIAL DATE 29 Mar 1973 DURATION 1/2 HOURS
B. TOTAL HOURS: IN TRAVEL 2 IN COURT 2 1/2

9. MOTIONS TO DISMISS:
A. ☒ SPEEDY TRIAL ☐ GRANTED B. ☐ ______ ☐ GRANTED

10. ISSUES RESOLVED ADVERSE TO GOVERNMENT:
A. SEARCH AND SEIZURE ☐
B. SELF INCRIMINATION ☐
C. MENTAL CAPACITY ☐
D. MENTAL RESPONSIBILITY ☐

11. ANY PRIOR TRIAL OF THIS CASE? ☐ YES ☒ NO

12. THESE PROCEEDINGS TERMINATED BY MISTRIAL? ☐ YES ☒ NO

13. SENTENCE ADJUDGED:
A. DISCHARGE: DISMISSAL ☐ DD ☐ BCD ☒
B. CONFINEMENT: ______ YEARS 6 MONTHS
C. FORFEITURES: $50 per month FOR 6 mos. TOTAL ☐
D. REDUCTION TO E-1
E. OTHER PUNISHMENT:

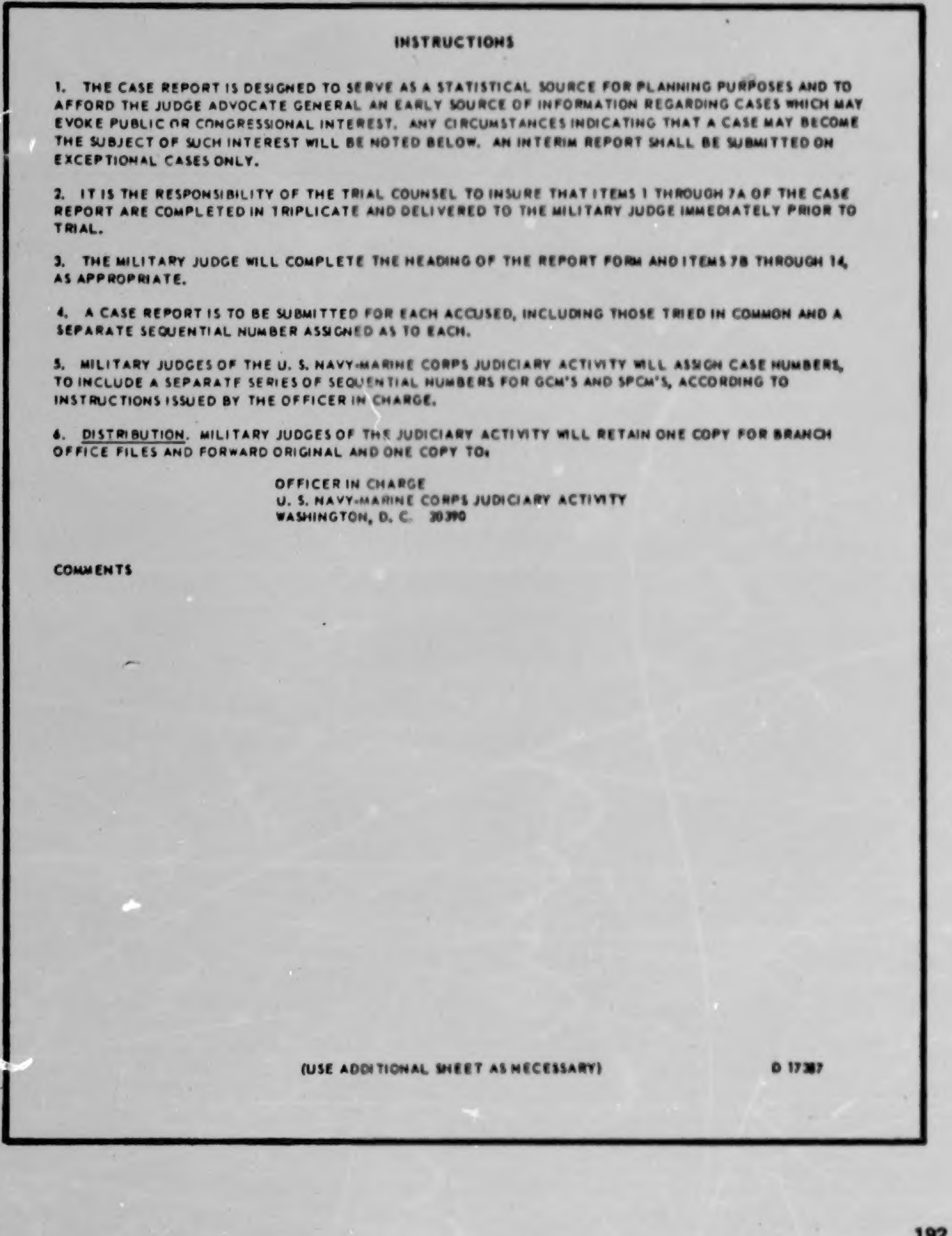
14. NEGOTIATED PLEA: ☐ YES ☒ NO (See JAG Manual secs. 0114b(1)(c) and 0114b(2)(d).)

SIGNATURE OF MILITARY JUDGE
J.C. [illegible] Cdr. JAGC USN
TANGO NUMBER: (IF ANY)

| ROUTING – PLEASE INITIAL | | |
|---|---|---|
| NAVMARJUDACT | JUDGE ADVOCATE GENERAL | |
| OINC | CODE 20 | CODE 02 |
| | | |

192.75.1

Figure 9-27.–Court-martial case report.



INSTRUCTIONS

1. THE CASE REPORT IS DESIGNED TO SERVE AS A STATISTICAL SOURCE FOR PLANNING PURPOSES AND TO AFFORD THE JUDGE ADVOCATE GENERAL AN EARLY SOURCE OF INFORMATION REGARDING CASES WHICH MAY EVOKE PUBLIC OR CONGRESSIONAL INTEREST. ANY CIRCUMSTANCES INDICATING THAT A CASE MAY BECOME THE SUBJECT OF SUCH INTEREST WILL BE NOTED BELOW. AN INTERIM REPORT SHALL BE SUBMITTED ON EXCEPTIONAL CASES ONLY.

2. IT IS THE RESPONSIBILITY OF THE TRIAL COUNSEL TO INSURE THAT ITEMS 1 THROUGH 7A OF THE CASE REPORT ARE COMPLETED IN TRIPLICATE AND DELIVERED TO THE MILITARY JUDGE IMMEDIATELY PRIOR TO TRIAL.

3. THE MILITARY JUDGE WILL COMPLETE THE HEADING OF THE REPORT FORM AND ITEMS 7B THROUGH 14, AS APPROPRIATE.

4. A CASE REPORT IS TO BE SUBMITTED FOR EACH ACCUSED, INCLUDING THOSE TRIED IN COMMON AND A SEPARATE SEQUENTIAL NUMBER ASSIGNED AS TO EACH.

5. MILITARY JUDGES OF THE U. S. NAVY-MARINE CORPS JUDICIARY ACTIVITY WILL ASSIGN CASE NUMBERS, TO INCLUDE A SEPARATE SERIES OF SEQUENTIAL NUMBERS FOR GCM'S AND SPCM'S, ACCORDING TO INSTRUCTIONS ISSUED BY THE OFFICER IN CHARGE.

6. DISTRIBUTION. MILITARY JUDGES OF THE JUDICIARY ACTIVITY WILL RETAIN ONE COPY FOR BRANCH OFFICE FILES AND FORWARD ORIGINAL AND ONE COPY TO:

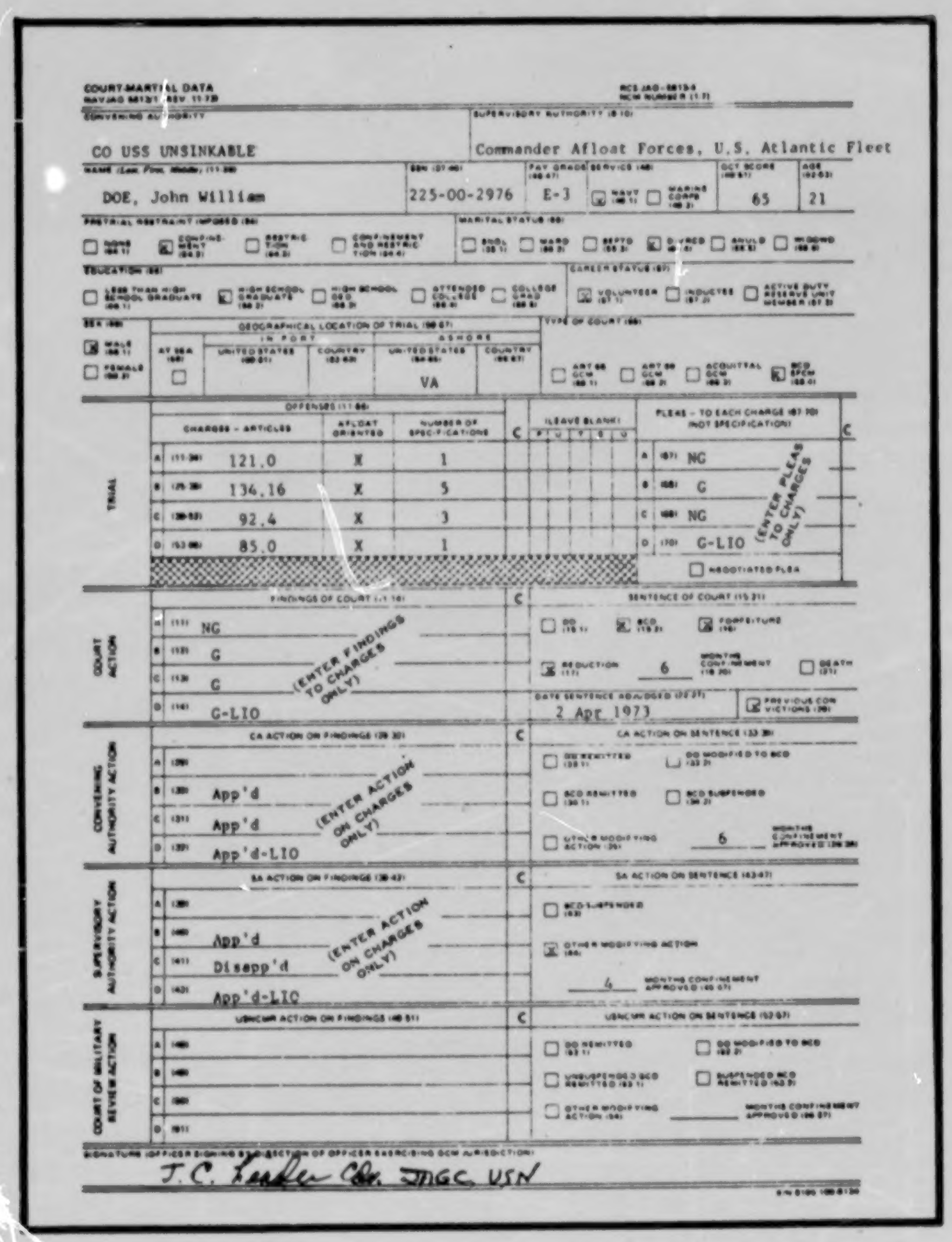
OFFICER IN CHARGE
U. S. NAVY-MARINE CORPS JUDICIARY ACTIVITY
WASHINGTON, D. C. 20390

COMMENTS

(USE ADDITIONAL SHEET AS NECESSARY) D 17387

192.75.2

Figure 9-27.—Court-martial case report—(Continued).



**COURT-MARTIAL DATA**

CONVENING AUTHORITY: CO USS UNSINKABLE

SUPERVISORY AUTHORITY: Commander Afloat Forces, U.S. Atlantic Fleet

NAME (Last, First, Middle): DOE, John William

SSN: 225-00-2976

PAY GRADE: E-3

SERVICE: ☒ NAVY ☐ MARINE CORPS

GCT SCORE: 65

AGE: 21

PRETRIAL RESTRAINT IMPOSED: ☐ NONE ☒ CONFINEMENT ☐ RESTRICTION ☐ CONFINEMENT AND RESTRICTION

MARITAL STATUS: ☐ SNGL ☐ MARD ☐ SEPTD ☒ DIVRCD ☐ ANULD ☐ WIDOWD

EDUCATION: ☐ LESS THAN HIGH SCHOOL GRADUATE ☒ HIGH SCHOOL GRADUATE ☐ HIGH SCHOOL GED ☐ ATTENDED COLLEGE ☐ COLLEGE GRAD

CAREER STATUS: ☒ VOLUNTEER ☐ INDUCTEE ☐ ACTIVE DUTY RESERVE UNIT MEMBER

SEX: ☒ MALE ☐ FEMALE

GEOGRAPHICAL LOCATION OF TRIAL: AT SEA ☐; IN PORT: UNITED STATES, COUNTRY; ASHORE: UNITED STATES VA, COUNTRY

TYPE OF COURT: ☐ ART 66 GCM ☐ ART 69 GCM ☐ ACQUITTAL GCM ☒ BCD SPCM

**TRIAL**

| | CHARGES – ARTICLES | AFLOAT ORIENTED | NUMBER OF SPECIFICATIONS | PLEAS – TO EACH CHARGE (NOT SPECIFICATION) |
|---|---|---|---|---|
| A | 121.0 | X | 1 | NG |
| B | 134.16 | X | 5 | G |
| C | 92.4 | X | 3 | NG |
| D | 85.0 | X | 1 | G-LIO |

(ENTER PLEAS TO CHARGES ONLY)

☐ NEGOTIATED PLEA

**COURT ACTION**

FINDINGS OF COURT (ENTER FINDINGS TO CHARGES ONLY):
A NG
B G
C G
D G-LIO

SENTENCE OF COURT: ☐ DD ☒ BCD ☒ FORFEITURE ☒ REDUCTION 6 MONTHS CONFINEMENT ☐ DEATH

DATE SENTENCE ADJUDGED: 2 Apr 1973

☒ PREVIOUS CONVICTIONS

**CONVENING AUTHORITY ACTION**

CA ACTION ON FINDINGS (ENTER ACTION ON CHARGES ONLY):
A
B App'd
C App'd
D App'd-LIO

CA ACTION ON SENTENCE: ☐ DD REMITTED ☐ DD MODIFIED TO BCD ☐ BCD REMITTED ☐ BCD SUSPENDED ☐ OTHER MODIFYING ACTION 6 MONTHS CONFINEMENT APPROVED

**SUPERVISORY AUTHORITY ACTION**

SA ACTION ON FINDINGS (ENTER ACTION ON CHARGES ONLY):
A
B App'd
C Disapp'd
D App'd-LIO

SA ACTION ON SENTENCE: ☐ BCD SUSPENDED ☒ OTHER MODIFYING ACTION 4 MONTHS CONFINEMENT APPROVED

**COURT OF MILITARY REVIEW ACTION**

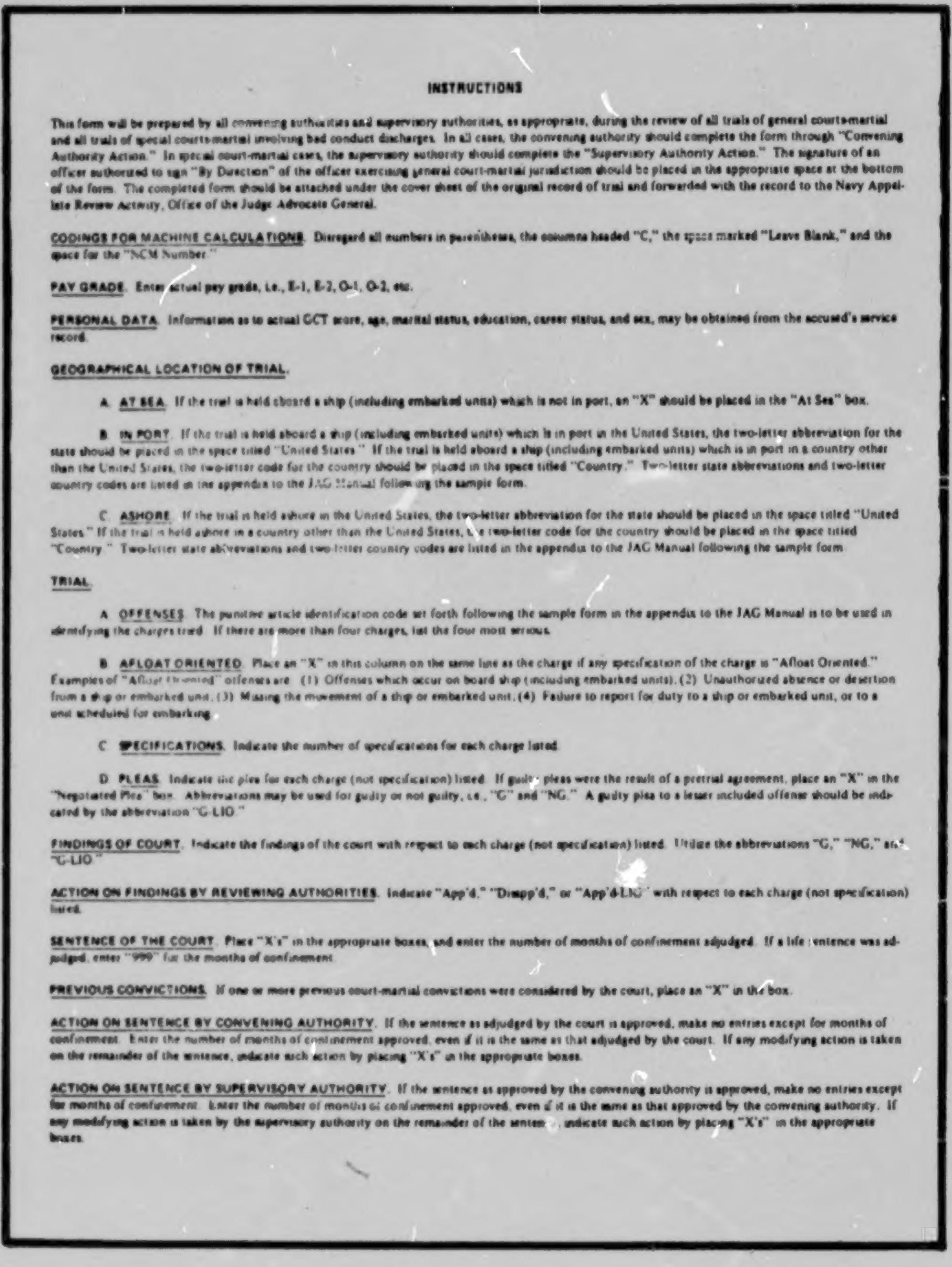
USNCMR ACTION ON FINDINGS:
A
B
C
D

USNCMR ACTION ON SENTENCE: ☐ DD REMITTED ☐ DD MODIFIED TO BCD ☐ UNSUSPENDED BCD REMITTED ☐ SUSPENDED BCD REMITTED ☐ OTHER MODIFYING ACTION MONTHS CONFINEMENT APPROVED

SIGNATURE (OFFICER SIGNING BY DIRECTION OF OFFICER EXERCISING GCM JURISDICTION): J.C. Cdr. JAGC USN

21.28.1

Figure 9-28.—Court-martial data form.



### INSTRUCTIONS

This form will be prepared by all convening authorities and supervisory authorities, as appropriate, during the review of all trials of general courts-martial and all trials of special courts-martial involving bad conduct discharges. In all cases, the convening authority should complete the form through "Convening Authority Action." In special court-martial cases, the supervisory authority should complete the "Supervisory Authority Action." The signature of an officer authorized to sign "By Direction" of the officer exercising general court-martial jurisdiction should be placed in the appropriate space at the bottom of the form. The completed form should be attached under the cover sheet of the original record of trial and forwarded with the record to the Navy Appellate Review Activity, Office of the Judge Advocate General.

CODINGS FOR MACHINE CALCULATIONS. Disregard all numbers in parentheses, the columns headed "C," the space marked "Leave Blank," and the space for the "NCM Number."

PAY GRADE. Enter actual pay grade, i.e., E-1, E-2, O-1, O-2, etc.

PERSONAL DATA. Information as to actual GCT score, age, marital status, education, career status, and sex, may be obtained from the accused's service record.

GEOGRAPHICAL LOCATION OF TRIAL.

A. AT SEA. If the trial is held aboard a ship (including embarked units) which is not in port, an "X" should be placed in the "At Sea" box.

B. IN PORT. If the trial is held aboard a ship (including embarked units) which is in port in the United States, the two-letter abbreviation for the state should be placed in the space titled "United States." If the trial is held aboard a ship (including embarked units) which is in port in a country other than the United States, the two-letter code for the country should be placed in the space titled "Country." Two-letter state abbreviations and two-letter country codes are listed in the appendix to the JAG Manual following the sample form.

C. ASHORE. If the trial is held ashore in the United States, the two-letter abbreviation for the state should be placed in the space titled "United States." If the trial is held ashore in a country other than the United States, the two-letter code for the country should be placed in the space titled "Country." Two-letter state abbreviations and two-letter country codes are listed in the appendix to the JAG Manual following the sample form.

TRIAL.

A. OFFENSES. The punitive article identification code set forth following the sample form in the appendix to the JAG Manual is to be used in identifying the charges tried. If there are more than four charges, list the four most serious.

B. AFLOAT ORIENTED. Place an "X" in this column on the same line as the charge if any specification of the charge is "Afloat Oriented." Examples of "Afloat Oriented" offenses are: (1) Offenses which occur on board ship (including embarked units), (2) Unauthorized absence or desertion from a ship or embarked unit, (3) Missing the movement of a ship or embarked unit, (4) Failure to report for duty to a ship or embarked unit, or to a unit scheduled for embarking.

C. SPECIFICATIONS. Indicate the number of specifications for each charge listed.

D. PLEAS. Indicate the plea for each charge (not specification) listed. If guilty pleas were the result of a pretrial agreement, place an "X" in the "Negotiated Plea" box. Abbreviations may be used for guilty or not guilty, i.e., "G" and "NG." A guilty plea to a lesser included offense should be indicated by the abbreviation "G-LIO."

FINDINGS OF COURT. Indicate the findings of the court with respect to each charge (not specification) listed. Utilize the abbreviations "G," "NG," and "G-LIO."

ACTION ON FINDINGS BY REVIEWING AUTHORITIES. Indicate "App'd," "Disapp'd," or "App'd-LIO" with respect to each charge (not specification) listed.

SENTENCE OF THE COURT. Place "X's" in the appropriate boxes, and enter the number of months of confinement adjudged. If a life sentence was adjudged, enter "999" for the months of confinement.

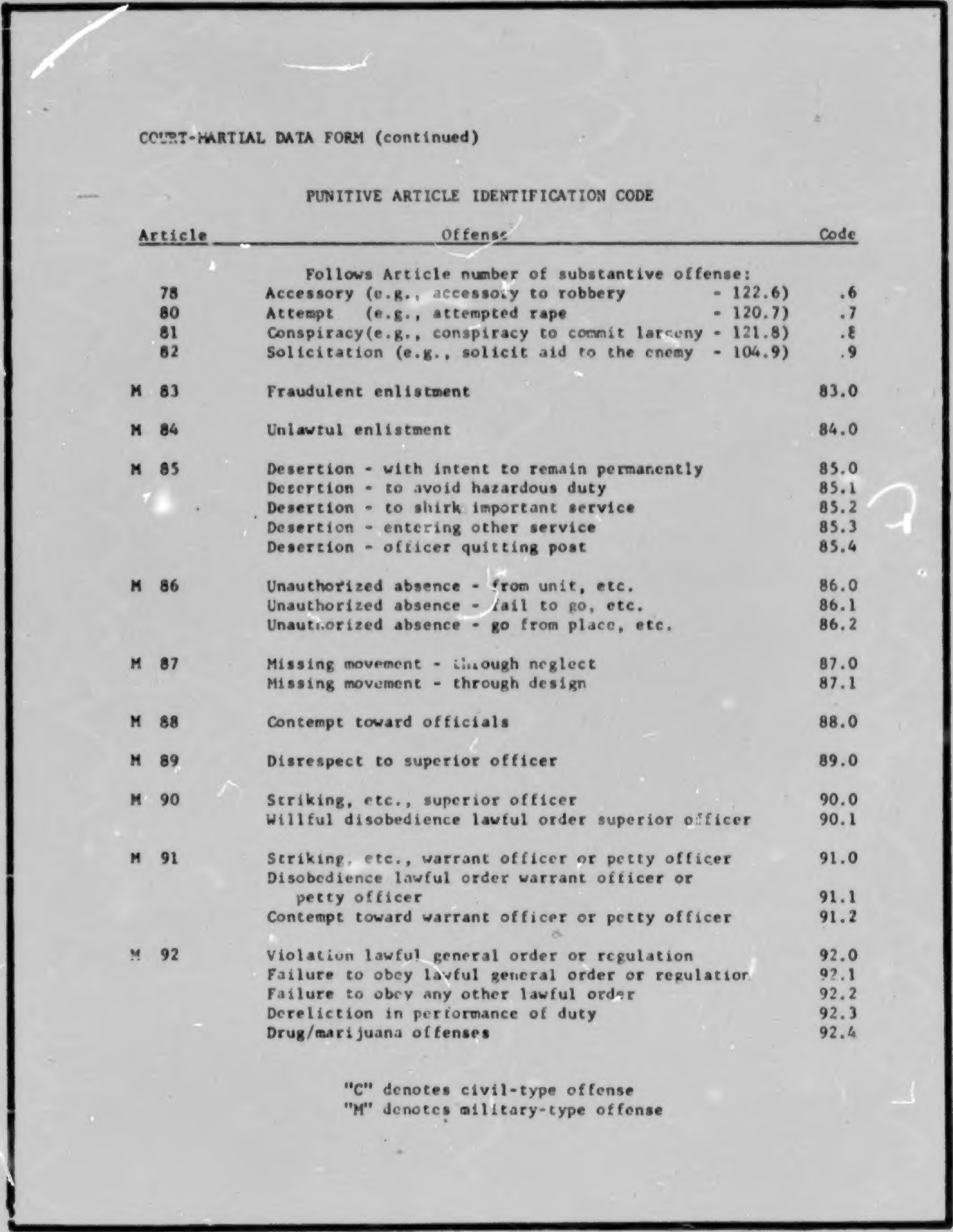
PREVIOUS CONVICTIONS. If one or more previous court-martial convictions were considered by the court, place an "X" in the box.

ACTION ON SENTENCE BY CONVENING AUTHORITY. If the sentence as adjudged by the court is approved, make no entries except for months of confinement. Enter the number of months of confinement approved, even if it is the same as that adjudged by the court. If any modifying action is taken on the remainder of the sentence, indicate such action by placing "X's" in the appropriate boxes.

ACTION ON SENTENCE BY SUPERVISORY AUTHORITY. If the sentence as approved by the convening authority is approved, make no entries except for months of confinement. Enter the number of months of confinement approved, even if it is the same as that approved by the convening authority. If any modifying action is taken by the supervisory authority on the remainder of the sentence, indicate such action by placing "X's" in the appropriate boxes.

21.28.2

Figure 9-28.—Court-martial data form—(Continued).



COURT-MARTIAL DATA FORM (continued)

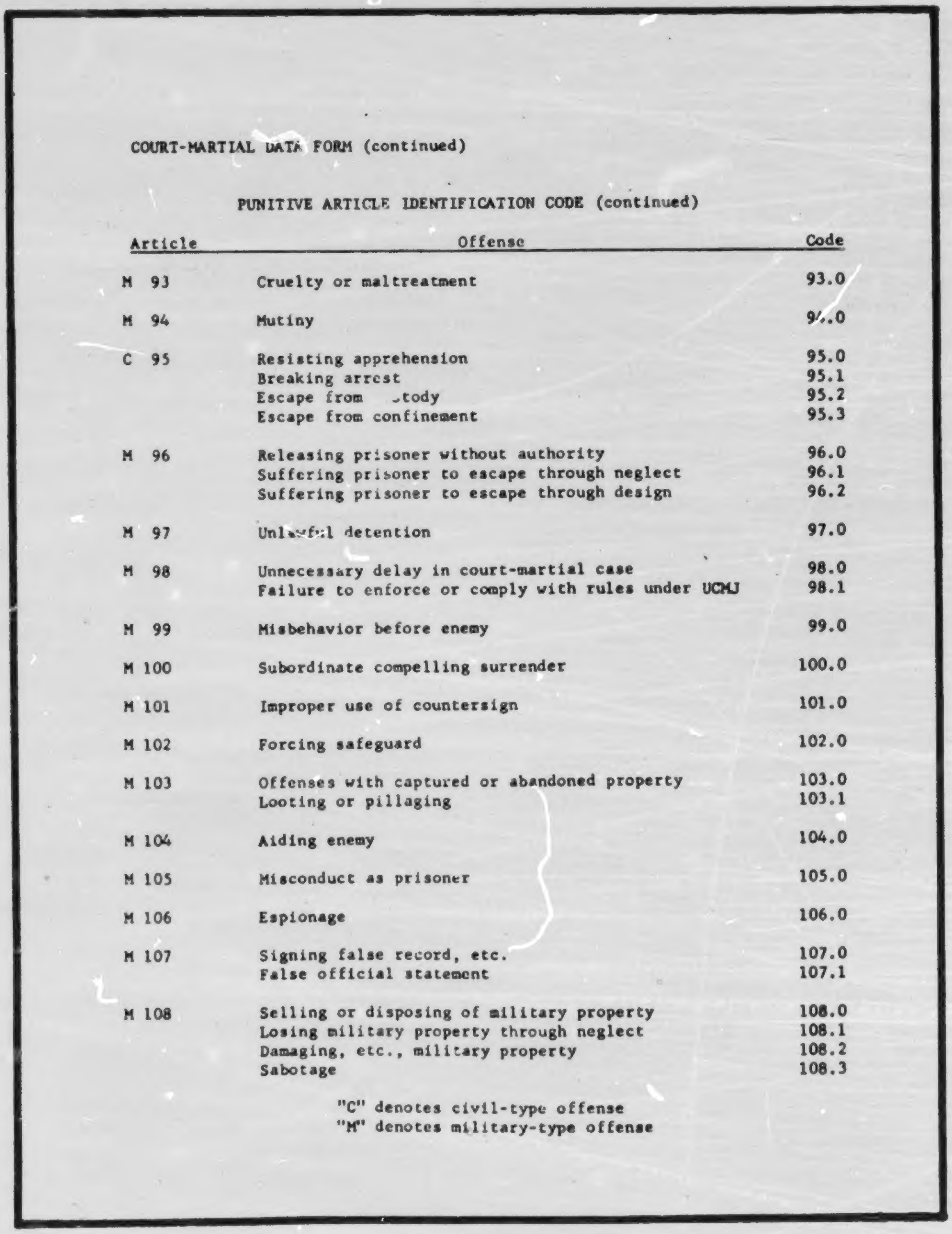
PUNITIVE ARTICLE IDENTIFICATION CODE

| Article | Offense | Code |
|---|---|---|
| | Follows Article number of substantive offense: | |
| 78 | Accessory (e.g., accessory to robbery - 122.6) | .6 |
| 80 | Attempt (e.g., attempted rape - 120.7) | .7 |
| 81 | Conspiracy(e.g., conspiracy to commit larceny - 121.8) | .8 |
| 82 | Solicitation (e.g., solicit aid to the enemy - 104.9) | .9 |
| M 83 | Fraudulent enlistment | 83.0 |
| M 84 | Unlawful enlistment | 84.0 |
| M 85 | Desertion - with intent to remain permanently | 85.0 |
| | Desertion - to avoid hazardous duty | 85.1 |
| | Desertion - to shirk important service | 85.2 |
| | Desertion - entering other service | 85.3 |
| | Desertion - officer quitting post | 85.4 |
| M 86 | Unauthorized absence - from unit, etc. | 86.0 |
| | Unauthorized absence - fail to go, etc. | 86.1 |
| | Unauthorized absence - go from place, etc. | 86.2 |
| M 87 | Missing movement - through neglect | 87.0 |
| | Missing movement - through design | 87.1 |
| M 88 | Contempt toward officials | 88.0 |
| M 89 | Disrespect to superior officer | 89.0 |
| M 90 | Striking, etc., superior officer | 90.0 |
| | Willful disobedience lawful order superior officer | 90.1 |
| M 91 | Striking, etc., warrant officer or petty officer | 91.0 |
| | Disobedience lawful order warrant officer or petty officer | 91.1 |
| | Contempt toward warrant officer or petty officer | 91.2 |
| M 92 | Violation lawful general order or regulation | 92.0 |
| | Failure to obey lawful general order or regulation | 92.1 |
| | Failure to obey any other lawful order | 92.2 |
| | Dereliction in performance of duty | 92.3 |
| | Drug/marijuana offenses | 92.4 |

"C" denotes civil-type offense
"M" denotes military-type offense

21.28.3

Figure 9-28.—Court-martial data form—(Continued).



COURT-MARTIAL DATA FORM (continued)

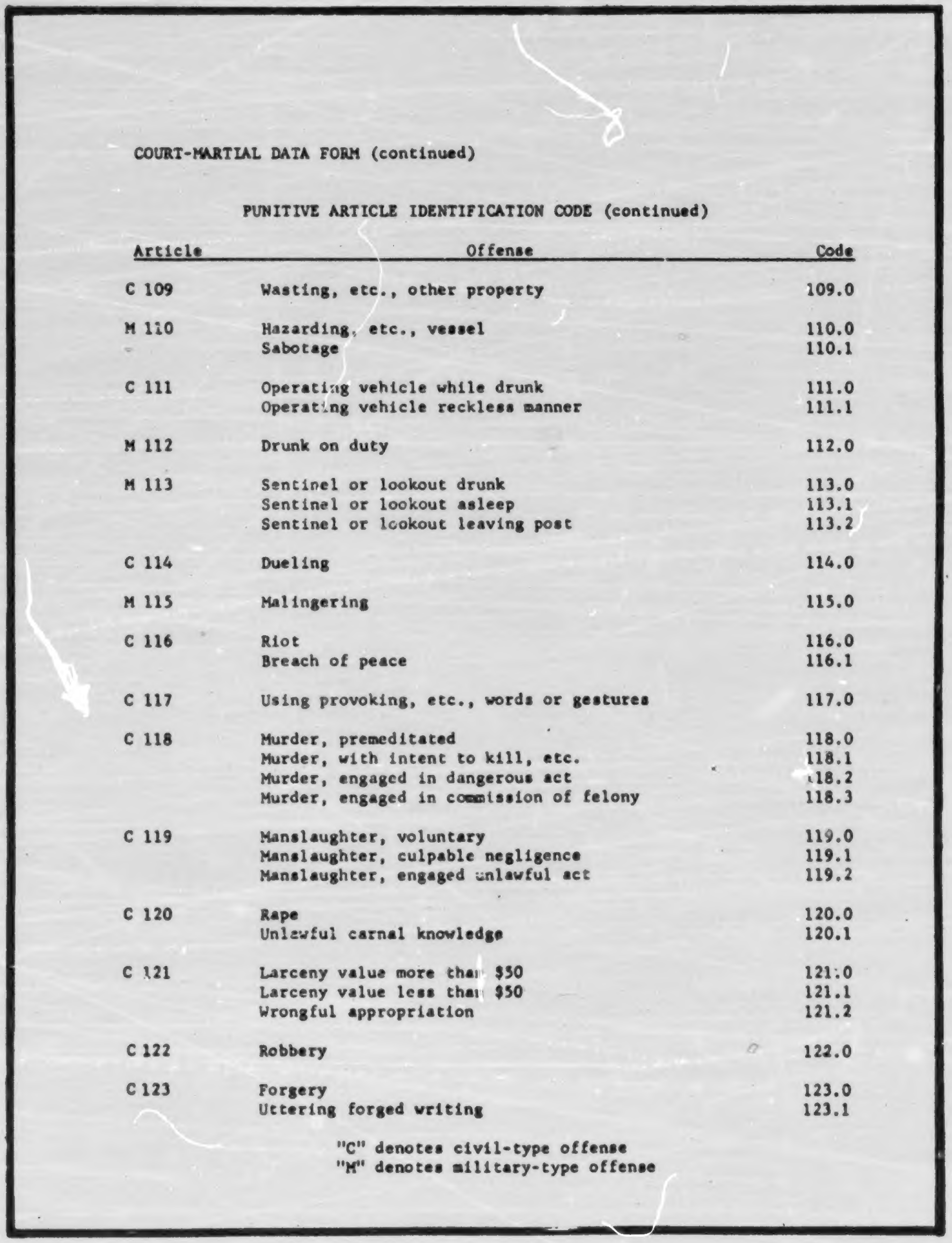
PUNITIVE ARTICLE IDENTIFICATION CODE (continued)

| Article | Offense | Code |
|---|---|---|
| M 93 | Cruelty or maltreatment | 93.0 |
| M 94 | Mutiny | 94.0 |
| C 95 | Resisting apprehension | 95.0 |
| | Breaking arrest | 95.1 |
| | Escape from custody | 95.2 |
| | Escape from confinement | 95.3 |
| M 96 | Releasing prisoner without authority | 96.0 |
| | Suffering prisoner to escape through neglect | 96.1 |
| | Suffering prisoner to escape through design | 96.2 |
| M 97 | Unlawful detention | 97.0 |
| M 98 | Unnecessary delay in court-martial case | 98.0 |
| | Failure to enforce or comply with rules under UCMJ | 98.1 |
| M 99 | Misbehavior before enemy | 99.0 |
| M 100 | Subordinate compelling surrender | 100.0 |
| M 101 | Improper use of countersign | 101.0 |
| M 102 | Forcing safeguard | 102.0 |
| M 103 | Offenses with captured or abandoned property | 103.0 |
| | Looting or pillaging | 103.1 |
| M 104 | Aiding enemy | 104.0 |
| M 105 | Misconduct as prisoner | 105.0 |
| M 106 | Espionage | 106.0 |
| M 107 | Signing false record, etc. | 107.0 |
| | False official statement | 107.1 |
| M 108 | Selling or disposing of military property | 108.0 |
| | Losing military property through neglect | 108.1 |
| | Damaging, etc., military property | 108.2 |
| | Sabotage | 108.3 |

"C" denotes civil-type offense
"M" denotes military-type offense

21.28.4

Figure 9-28.—Court-martial data form—(Continued).



COURT-MARTIAL DATA FORM (continued)

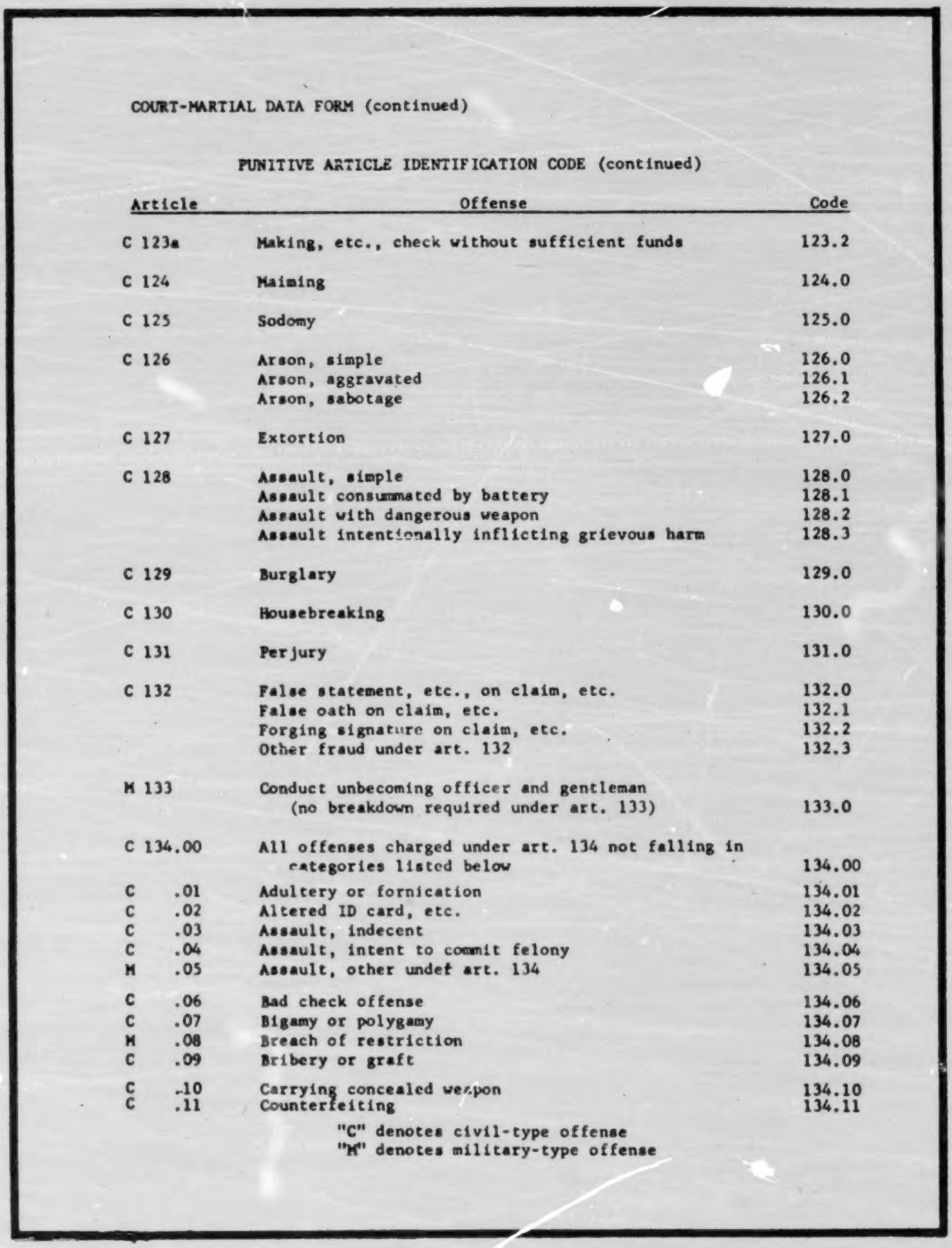
PUNITIVE ARTICLE IDENTIFICATION CODE (continued)

| Article | Offense | Code |
|---|---|---|
| C 109 | Wasting, etc., other property | 109.0 |
| M 110 | Hazarding, etc., vessel | 110.0 |
| | Sabotage | 110.1 |
| C 111 | Operating vehicle while drunk | 111.0 |
| | Operating vehicle reckless manner | 111.1 |
| M 112 | Drunk on duty | 112.0 |
| M 113 | Sentinel or lookout drunk | 113.0 |
| | Sentinel or lookout asleep | 113.1 |
| | Sentinel or lookout leaving post | 113.2 |
| C 114 | Dueling | 114.0 |
| M 115 | Malingering | 115.0 |
| C 116 | Riot | 116.0 |
| | Breach of peace | 116.1 |
| C 117 | Using provoking, etc., words or gestures | 117.0 |
| C 118 | Murder, premeditated | 118.0 |
| | Murder, with intent to kill, etc. | 118.1 |
| | Murder, engaged in dangerous act | 118.2 |
| | Murder, engaged in commission of felony | 118.3 |
| C 119 | Manslaughter, voluntary | 119.0 |
| | Manslaughter, culpable negligence | 119.1 |
| | Manslaughter, engaged unlawful act | 119.2 |
| C 120 | Rape | 120.0 |
| | Unlawful carnal knowledge | 120.1 |
| C 121 | Larceny value more than $50 | 121.0 |
| | Larceny value less than $50 | 121.1 |
| | Wrongful appropriation | 121.2 |
| C 122 | Robbery | 122.0 |
| C 123 | Forgery | 123.0 |
| | Uttering forged writing | 123.1 |

"C" denotes civil-type offense
"M" denotes military-type offense

21.28.5

Figure 9-28.—Court-martial data form—(Continued).



COURT-MARTIAL DATA FORM (continued)

PUNITIVE ARTICLE IDENTIFICATION CODE (continued)

| Article | Offense | Code |
|---|---|---|
| C 123a | Making, etc., check without sufficient funds | 123.2 |
| C 124 | Maiming | 124.0 |
| C 125 | Sodomy | 125.0 |
| C 126 | Arson, simple | 126.0 |
| | Arson, aggravated | 126.1 |
| | Arson, sabotage | 126.2 |
| C 127 | Extortion | 127.0 |
| C 128 | Assault, simple | 128.0 |
| | Assault consummated by battery | 128.1 |
| | Assault with dangerous weapon | 128.2 |
| | Assault intentionally inflicting grievous harm | 128.3 |
| C 129 | Burglary | 129.0 |
| C 130 | Housebreaking | 130.0 |
| C 131 | Perjury | 131.0 |
| C 132 | False statement, etc., on claim, etc. | 132.0 |
| | False oath on claim, etc. | 132.1 |
| | Forging signature on claim, etc. | 132.2 |
| | Other fraud under art. 132 | 132.3 |
| M 133 | Conduct unbecoming officer and gentleman (no breakdown required under art. 133) | 133.0 |
| C 134.00 | All offenses charged under art. 134 not falling in categories listed below | 134.00 |
| C .01 | Adultery or fornication | 134.01 |
| C .02 | Altered ID card, etc. | 134.02 |
| C .03 | Assault, indecent | 134.03 |
| C .04 | Assault, intent to commit felony | 134.04 |
| M .05 | Assault, other undef art. 134 | 134.05 |
| C .06 | Bad check offense | 134.06 |
| C .07 | Bigamy or polygamy | 134.07 |
| M .08 | Breach of restriction | 134.08 |
| C .09 | Bribery or graft | 134.09 |
| C .10 | Carrying concealed weapon | 134.10 |
| C .11 | Counterfeiting | 134.11 |

"C" denotes civil-type offense
"M" denotes military-type offense

21.28.6

Figure 9-28.—Court-martial data form—(Continued).

COURT-MARTIAL DATA FORM (continued)

PUNITIVE ARTICLE IDENTIFICATION CODE (continued)

| Article | | Offense | Code |
|---|---|---|---|
| C | .12 | Destroying, altering, etc., public record | 134.12 |
| M | .13 | Discharging firearm | 134.13 |
| M | .14 | Disloyal statement | 134.14 |
| C | .15 | Disorder, disorderly | 134.15 |
| C | .16 | Drugs or marijuana | 134.16 |
| C | .17 | Drunk | 134.17 |
| C | .18 | Drunk and disorderly | 134.18 |
| C | .19 | Failure to pay debts | 134.19 |
| M | .20 | False pass or permit | 134.20 |
| C | .21 | False swearing | 134.31 |
| C | .22 | Gambling | 134.22 |
| M | .23 | Impersonating officer | 134.23 |
| M | .24 | Improper uniform | 134.24 |
| C | .25 | Indecent act or liberties with child | 134.25 |
| C | .26 | Indecent or lewd act | 134.26 |
| C | .27 | Indecent exposure | 134.27 |
| C | .28 | Indecent language to female | 134.28 |
| C | .29 | Leaving scene of accident | 134.29 |
| M | .30 | Misbehavior as sentry | 134.30 |
| C | .31 | Misprision of felony | 134.31 |
| C | .32 | Negligent homicide | 134.32 |
| C | .33 | Nuisance | 134.33 |
| C | .34 | Obscene letter | 134.34 |
| C | .35 | Offenses involving mail matter | 134.35 |
| C | .36 | Pandering | 134.36 |
| M | .37 | Parole | 134.37 |
| C | .38 | Perjury, statutory or subornation of | 134.38 |
| C | .39 | Receiving stolen property | 134.39 |
| C | .40 | Refusal to testify | 134.40 |
| | | Sabotage (see 134.50) | |
| C | .41 | Sale to or purchase of liquor by minor | 134.41 |
| C | .42 | Smuggling | 134.42 |
| M | .43 | Straggling | 134.43 |
| C | .44 | Threats | 134.44 |
| M | .45 | Unauthorized insignia, etc. | 134.45 |
| M | .46 | Unclean accoutrements, arms, etc. | 134.46 |
| C | .47 | Unlawful entry | 134.47 |
| C | .48 | Usury | 134.48 |
| C | .49 | Wrongful use Government property | 134.49 |
| C | .50 | Sabotage | 134.50 |

"C" denotes civil-type offense
"M" denotes military-type offense

21.28.7

Figure 9-28.—Court-martial data form—(Continued).

In making recommendations to the Naval Clemency and Parole Board, the provisions of SECNAVINST 5815.3 series must be complied with. This instruction sets forth explicit directions and procedures for the submission of requests for clemency.

## COURT-MARTIAL CASE REPORT

The Court-Martial Case Report, NAVJAG 5813/2, is designed to serve as a statistical source for planning purposes and to afford the Judge Advocate General an early source of information regarding cases which may evoke public or congressional interest. A Case Report must be submitted by the "Presiding Officer" with respect to each accused tried by general or special court-martial. The term "presiding officer" includes a military judge of the Judiciary Activity, any other military judge assigned to a special court-martial, and the president of a special court-martial without a military judge. See figure 9-27 for a completed example of this report.

## COURT-MARTIAL DATA FORM

The Court-Martial Data Form, NAVJAG 5813/1, must be submitted by all convening authorities and supervisory authorities, as appropriate, after review of all trials of general courts-martial and all trials of special courts-martial in which the approved sentence includes a bad-conduct discharge. The form must be prefixed to the original record of trial just under the front cover sheet.

Figure 9-28 illustrates a completed Court-Martial Data Form. The punitive article identification codes are also included.

## CHAPTER 10

# DELIVERY OF PERSONNEL

This chapter deals with delivery of personnel to the civil authorities, service of process and subpoenas, and the production of official records for delivery to the civil authorities.

Whether you are assigned to a small legal office or to a large law center, you will probably be involved in the above mentioned areas in official dealings with Local, State, and Federal authorities. This chapter is designed to provide you with background information and acquaint you with the procedures to be followed in processing requests in connection with delivery of personnel, the furnishing of official records, and matters concerning service of subpoenas.

## DELIVERY

There are varying circumstances to be considered when a request for delivery of a member is received. Questions arise concerning jurisdiction, extradition matters, and agreements which must be executed. The following discussion of these circumstances is presented to give you an understanding of the factors involved.

### WITHIN JURISDICTION OF REQUESTING STATE

When delivery of any person in the Navy or Marine Corps is requested by the local civil authorities of a State, Territory, or Commonwealth for trial for an offense punishable under the laws of that jurisdiction, the commanding officer will normally deliver the requested person upon presentation of a proper warrant. There are circumstances in which delivery may be refused, which are discussed later.

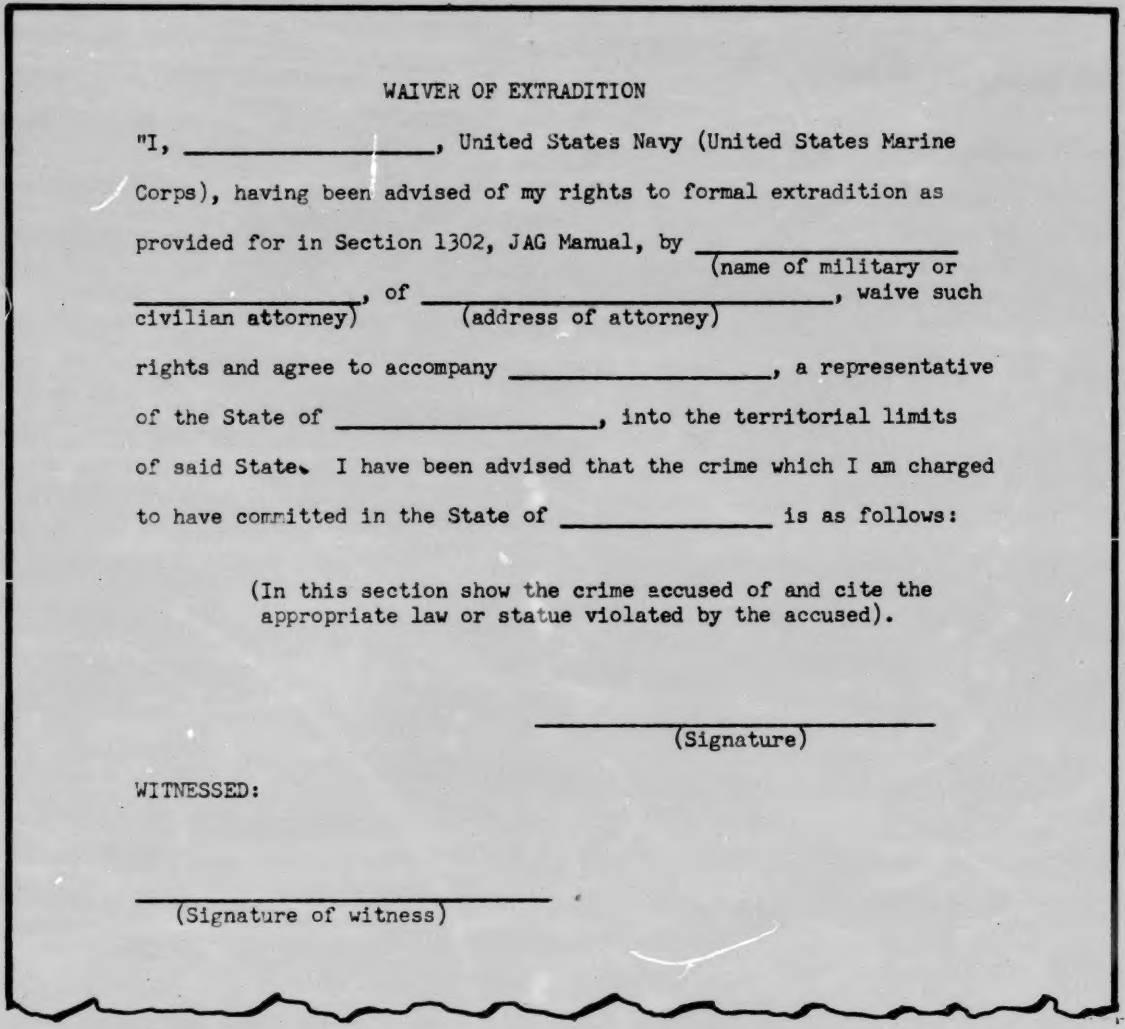
### BEYOND JURISDICTION OF REQUESTING STATE

In each case in which delivery for trial of any member of the Navy or Marine Corps to the civil authorities of a state is desired, and the member concerned is not attached to a Navy or Marine Corps activity within the requesting State, Territory, or Commonwealth, or a ship within the territorial waters of the requesting State, any officer exercising GCM jurisdiction, or an officer designated by him, may deliver the requested member for the purpose of making him amenable to prosecution. Requirements which must be met by the State authorities in these cases include completing the extradition process according to prescribed procedures to obtain custody of the person from the State in which he is located, unless the member waives extradition. The requesting State authorities must also make arrangements to take the requested member into custody in the State in which he is located. The agreement discussed below and shown in figure 10-2 must also be executed prior to delivery of the member.

#### Fugitive Warrants

For our purposes in this chapter, a fugitive warrant may be defined as a warrant for the arrest of an individual issued by a court of competent jurisdiction of the State in which the individual concerned is then located, and which may be based on a warrant issued by still another State.

When delivery of an individual is sought on the basis of a fugitive warrant, the commanding



WAIVER OF EXTRADITION

"I, ____________________, United States Navy (United States Marine Corps), having been advised of my rights to formal extradition as provided for in Section 1302, JAG Manual, by ____________________ (name of military or civilian attorney), of ______________________________ (address of attorney), waive such rights and agree to accompany ____________________, a representative of the State of ____________________, into the territorial limits of said State. I have been advised that the crime which I am charged to have committed in the State of __________________ is as follows:

(In this section show the crime accused of and cite the appropriate law or statue violated by the accused).

______________________________
(Signature)

WITNESSED:

______________________________
(Signature of witness)

192.77

Figure 10-1.—Waiver of Extradition.

officer will normally deliver the requested person. However, prior to the delivery, and in the absence of a waiver of extradition by the member concerned, the authorities of the requesting State must complete the extradition process to obtain custody of the person from the State in which he is located. Again, the requesting State must make arrangements to take the individual into custody in the State where he is located. Any person may waive formal extradition. A waiver must be in writing and witnessed. It must include a statement that the person signing it has received counsel of either a military or civilian attorney prior to executing the waiver, and it must further set forth the name and address of the attorney consulted. Figure 10-1 is an example of the waiver which should be used when the member waives extradition. An executed copy of this waiver must be forwarded to the JAG immediately after its execution.

If the member declines to waive extradition, the nearest Navy or Marine Corps Law Center must be informed since further representations to the civil authorities may be necessary.

In any event the commanding officer must not transfer or order the member out of the State in which he is then located until the matter of extradition has been resolved unless permission of the SECNAV(JAG) has been obtained.

When the State in which the member is located desires custody of him solely for the purpose of delivering him to another State, as on the basis of a fugitive warrant, the officials of both States involved must sign the delivery agreement shown in figure 10-2, or the agreement must be modified to show clearly that the State in which the member is located may not avoid the responsibility of returning the member to the Navy.

## PERSONNEL OUTSIDE THE UNITED STATES

When delivery of a member of the Navy or Marine Corps is desired for trial by State, Territory, Commonwealth, or local civil authorities in the United States, and the member is stationed outside the United States, a requisition for delivery of the member must be made by the Governor of the requesting State, addressed to the Secretary of the Navy. The requisition must show that the member desired is charged with a crime in that State, Territory, or Commonwealth, for which he could be extradited under the *Constitution of the United States,* the enactments of Congress, or the laws of the jurisdiction desiring his delivery. The requisition should be forwarded to the SECNAV(JAG) for examination. If the papers allege that the member is a fugitive from the justice of that State, Territory, or Commonwealth and that he is charged with an extraditable crime, and the papers are otherwise found to be in due form, the normal procedure is that the SECNAV(JAG) directs the Commandant of the Marine Corps (CMC) or the Chief of Naval Personnel (CHNAVPERS), as appropriate, to issue orders to the member concerned directing his transfer to the United States to the military installation most convenient for the Navy. Only the minimum restraint over the member required under the circumstances should be employed. The CMC or CHNAVPERS, as appropriate, normally informs the officials of the requesting State of the location of the member. The requesting State must then execute the agreement shown in figure 10-2 and complete the extradition process, if necessary, before delivery may be effected.

## DELIVERY AGREEMENT

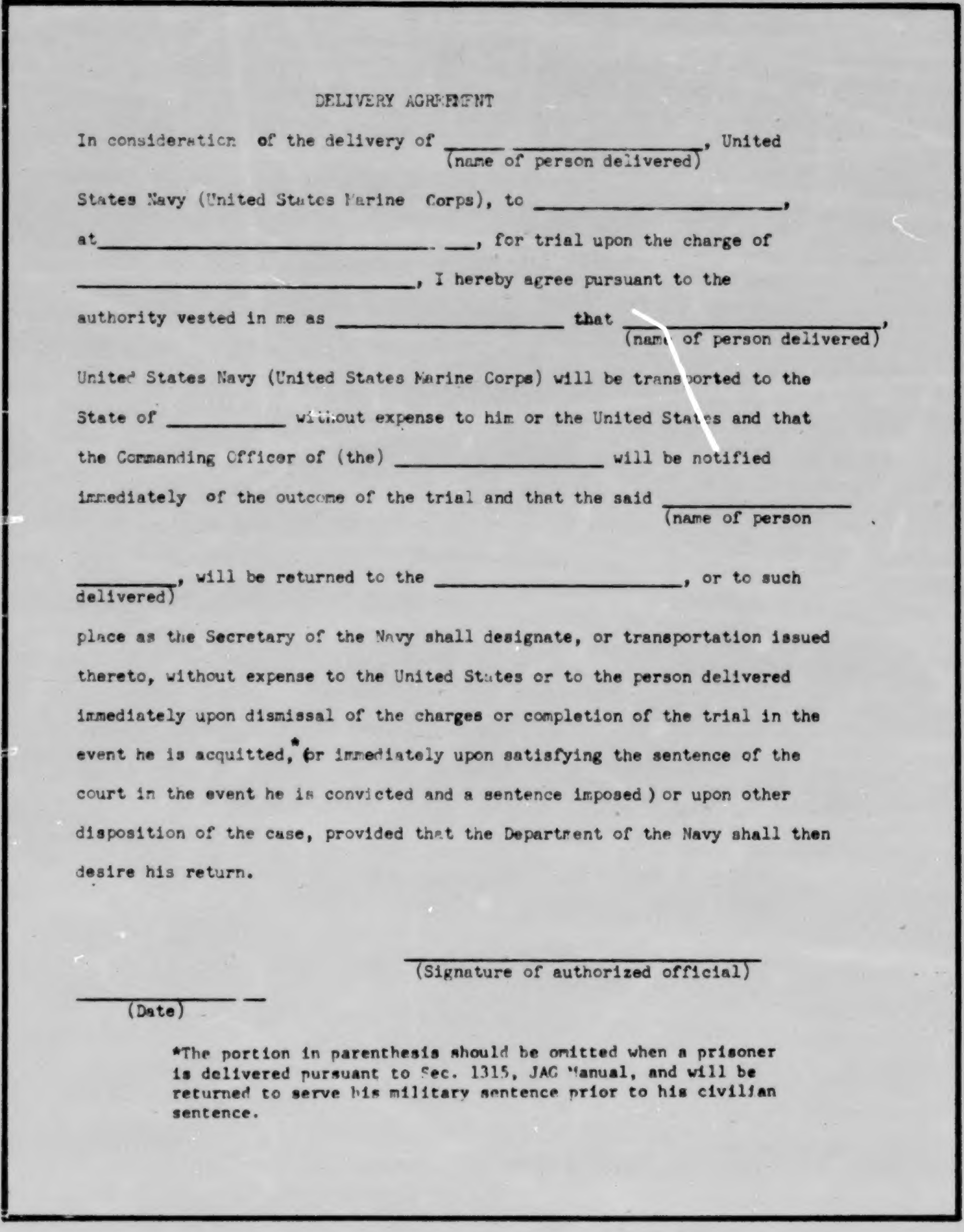
In each case in which delivery for trial of any member of the Navy or Marine Corps to the civil authorities of a State is authorized, the member's commanding officer must obtain a written agreement from the Governor or other authorized official of the requesting State concerning the expenses incurred in connection with the delivery and return of the member. Figure 10-2 is the recommended form of the agreement which should be used.

## DELIVERY TO FEDERAL AUTHORITIES

Commanding officers are authorized to deliver personnel to Federal law enforcement authorities who present proper credentials and show to the command that a federal warrant has been issued for the arrest of the member concerned. The agreement shown in figure 10-2 is not required preliminary to delivery of personnel to Federal law enforcement authorities. Expenses incurred in connection with the delivery and return of the member are paid from an appropriation under the control of the Department of Justice.

## DELIVERY TO FOREIGN AUTHORITIES

Under current regulations, commanding officers are not authorized to deliver personnel to foreign authorities unless provided for by an agreement between the United States and the foreign government concerned. When a request for delivery of personnel is received in a country



DELIVERY AGREEMENT

In consideration of the delivery of _____ _________________, United
(name of person delivered)

States Navy (United States Marine Corps), to ______________________,

at ______________________________ ___, for trial upon the charge of

______________________________, I hereby agree pursuant to the

authority vested in me as _____________________ that ______________________,
(name of person delivered)

United States Navy (United States Marine Corps) will be transported to the

State of __________ without expense to him or the United States and that

the Commanding Officer of (the) __________________ will be notified

immediately of the outcome of the trial and that the said _________________
(name of person

_________, will be returned to the _______________________, or to such
delivered)

place as the Secretary of the Navy shall designate, or transportation issued thereto, without expense to the United States or to the person delivered immediately upon dismissal of the charges or completion of the trial in the event he is acquitted,* (or immediately upon satisfying the sentence of the court in the event he is convicted and a sentence imposed) or upon other disposition of the case, provided that the Department of the Navy shall then desire his return.

________________________________
(Signature of authorized official)

______________ __
(Date)

*The portion in parenthesis should be omitted when a prisoner is delivered pursuant to Sec. 1315, JAG Manual, and will be returned to serve his military sentence prior to his civilian sentence.

192.78

Figure 10-2.—Delivery Agreement (State or local civil authorities).

with which the United States has no agreement, or when the commanding officer is in doubt, advice should be sought from JAG.

## CIRCUMSTANCES WHEN DELIVERY IS REFUSED

There are situations in which delivery of personnel may be refused or which require specific approval by higher authority before delivery may be effected. Some of these situations and the procedures to be followed when delivery is refused are discussed below.

### Disciplinary Action Pending

When disciplinary action or proceedings involving military offenses are pending or the member is undergoing the sentence of a court-martial, the commanding officer must obtain specific authority from the SECNAV(JAG) to deliver personnel to Federal, State, Territory, Commonwealth, or local authorities.

### When Delivery May be Refused

Delivery of personnel to civil authorities may be refused in the following circumstances:

- Where it appears that naval personnel have committed several offenses, including both major Federal offenses and serious, but purely military offenses, the commanding officer may investigate all of the suspected military offenses, and such of the civil offenses as may be practicable, and retain the accused for prosecution by the Navy.
- Where the accused is undergoing a sentence of a court-martial. However, the "Interstate Agreement on Detainers Act" (Public Law 91-538; 84 Stat. 1397; 18 U.S.C. A App.) provides for the delivery of a sentenced prisoner to a jurisdiction in which an untried indictment, information, or complaint is pending, for temporary custody pending trial. Any request made pursuant to the "Interstate Agreement on Detainers Act" must be forwarded expeditiously to the Director of the nearest Navy or Marine Corps Law Center who will monitor and take action on all such requests.
- When the commanding officer considers that conditions exist which indicate delivery should not be effected.

## REPORTS REQUIRED

Reports of action taken are required when personnel are delivered, when delivery is refused, when disposition is made by the civil authorities, or when personnel are confined by foreign authorities.

### When Personnel are Delivered

When personnel are delivered to civil authorities, whether Federal, State, Territory, Commonwealth, local, or foreign, a written report of delivery must be made by the commanding officer to the CHNAVPERS or the CMC, as appropriate. In cases in which SECNAV or JAG has authorized the delivery, a copy of the report must be furnished to the JAG. However, when personnel are delivered to local civil authorities for misdemeanors not involving moral turpitude and are returned to the command within 24 hours, a report need not be made.

### Disposition Made by Civil Authorities

When the trial of a member who has been delivered is completed or the charges dismissed, the commanding officer must submit a full report, by letter, to the CHNAVPERS or the CMC, as appropriate, of the offense(s) charged, the findings and sentence, or other action taken. In those cases in which the delivery was authorized by the SECNAV or JAG, a copy of the report must be furnished to JAG. Certain of these cases must also be processed under applicable provisions of the *BUPERS Manual* pertaining to the administrative separation of personnel. Refer to Chapter 11 for information on the processing of personnel for administrative discharge.

### When Delivery Is Refused

In any case where delivery has been refused, the commanding officer must report the circumstances to JAG by message or by telephone if the circumstances warrant. This initial report must be confirmed by letter stating the facts and circumstances surrounding the refusal. A copy of the report must be provided the Commandant of the Naval District or Area Coordinator concerned.

### Confinement by Foreign Authorities

When any member of the Navy or Marine Corps is held or confined by foreign authorities in connection with criminal charges, the commanding officer must submit a full initial report, by letter, to the CHNAVPERS or CMC, as appropriate, with a copy to the JAG. This report, and subsequent reports of any significant change, must include the offense(s) charged and of which convicted, the sentence, the place of confinement, conditions of confinement, and health and welfare information concerning the member. Again, certain of these cases will require processing under applicable provisions of the *BUPERS Manual* pertaining to the administrative separation of personnel. See Chapter 11.

You should not confuse the reporting requirements discussed above with those required by SECNAVINST 5820.4 series. These reports are separate from and in addition to the reports required under that Instruction.

## PERSONNEL RELEASED ON BAIL

A member of the Navy or Marine Corps arrested by Federal, State, or Territorial authorities and released on his own recognizance has a duty to return to his parent organization. In cases where personnel have been released on bail or on their own recognizance, the commanding officer, after verifying the pertinent facts, date of trial, and approximate length of time needed, should normally grant liberty or leave to permit appearance of the member at trial. The mere fact that the member is in the military service is not sufficient reason for him to avoid the obligations of his bond or of his recognizance.

## INTERVIEWING BY CIVILIAN AGENCIES

Requests by the Federal Bureau of Investigation or other Federal civilian investigative agencies to interrogate members of the naval service should be promptly honored. Any refusal of a request of such agencies must be reported immediately to the JAG setting forth the pertinent facts surrounding the refusal.

## HABEAS CORPUS

*Black's Law Dictionary* defines "habeas corpus" as "The name given to a variety of writs (of which these were anciently the emphatic words), having for their object to bring a party before a court or judge." In common usage, and whenever these words are used alone, they should be understood to mean "habeas corpus ad subjiciendum," which *Black* defines as "a writ directed to the person detaining another, and commanding him to produce the body of the prisoner (or person detained) with the day and cause of his caption and detention, (ad faciendum, subjiciendum et recipiendum), to do, submit to, and receive whatsoever the judge or court awarding the writ shall consider in that behalf." Habeas corpus is the remedy employed for deliverance of a person from illegal confinement. The sole function of the writ is to release individuals from unlawful confinement. The only issue involved in habeas corpus proceedings is whether the prisoner or detainee is restrained of his liberty by due process. The guilt or innocence of the prisoner or detainee is not at issue and is not considered by the court in these proceedings.

### U.S. ATTORNEY ASSISTANCE

In cases where habeas corpus process is served on a member of the Navy or Marine Corps, the commanding officer or his representative must immediately inform the nearest U.S. Attorney and request his assistance. Additionally, a report of the service must be made to the SECNAV(JAG).

### REPORT REQUIRED TO SECNAV(JAG)

The initial report to the SECNAV(JAG) must be made by message, or telephone if the circumstances warrant. In all probability the SJA will make the telephonic report or draft the initial message report, but this duty may fall to you if you are attached to a small command without an SJA assigned. You should, therefore, be generally familiar with the action to be taken. The initial telephonic or message report must be confirmed by speedletter. This speedletter should include a full statement of the circumstances under which the petitioner (person in whose behalf the writ has been filed) has been detained. A copy of the writ and all other pleadings, orders, and process in the case must also be forwarded to the SECNAV(JAG) with this confirmation letter. When the hearing has been completed and the court has issued its order in the case, a copy of the order must be promptly forwarded to the SECNAV(JAG). This is particularly important if the order is adverse to the Navy in order that a determination may be made as to whether to undertake further proceedings.

Your primary source of information and regulations concerning delivery of personnel to the civil authorities is contained in Part A, Chapter XIII, *Jag Manual* (JAGINST 5800.7 series). When effecting delivery of a member to the civil authorities, you should check this source to ensure that all required procedures and agreements are in order and that any required reports are promptly made.

## SERVICE OF PROCESS AND SUBPOENAS

Just what does "service of process" mean? And what is a "subpoena"? Perhaps a look at the definitions of these words will aid you in understanding their meanings, in the legal sense. These definitions are taken from *Black's Law Dictionary*.

- SERVICE–"The exhibition or delivery of a writ, notice, injunction, et cetera, by an authorized person, to a person who is thereby officially notified of some action or proceeding in which he is concerned, and is thereby advised or warned to take some action or step which he is commanded to take or to forbear."
- PROCESS–"This word is generally defined to be the means of compelling the defendant in an action to appear in court***or a means whereby a court compels a compliance with its demands. ***The word 'process', however, as now commonly understood, signifies those formal instruments called 'writs'. The word 'process' is in common-law practice frequently applied to the writ of summons, which is the instrument now in use for commencing personal actions. ***But in its more comprehensive signification it includes not only the writ of summons, but all other writs which may be issued during the progress of an action."
- SUBPOENA–"A process to cause a witness to appear and give testimony, commanding him to lay aside all pretenses and excuses, and appear before a court or magistrate therein named at a time therein mentioned to testify for the party named under a penalty therein mentioned."

The word "subpoena" is a Latin word meaning "sub"–under, "poena"–penalty, or "under penalty". The technical term is "subpoena ad testificandum", meaning "subpoena to testify". As you can see, a subpoena is a form of "process" and, for our purposes in this chapter, is included in the term.

## SERVICE OF PROCESS UPON PERSONNEL

As with delivery of personnel, there are several circumstances which must be considered before allowing service of process on members of the command. The question of jurisdiction arises, as does the status of the individual to be served.

### Within Jurisdiction Of The Court

Commanding officers afloat and ashore are authorized to permit service of process of Federal, State, Territorial, or local courts upon naval personnel or civilians located within their commands and within the jurisdiction of the court out of which the process issues. However, service should not be permitted within the confines of the command without the permission of the commanding officer. Personnel serving aboard vessels located within the territorial waters of the State or Territory out of which the process issues are considered to be within the jurisdiction of the State or Territory for the purpose of service of process. The commanding officer must permit the service of process except in unusual cases where he concludes that compliance with the requirements of the process would seriously prejudice the public interest. Where practicable, the commanding officer must require that process be served in his presence, or in the presence of an officer designated by him. Where service of process by mail meets the requirements of the law, the process may be mailed directly to the person involved. In all cases, however, the commanding officer must ensure that the nature of the process is explained to the person concerned.

### Beyond Jurisdiction of the Court

Where a person in the naval service, or a civilian, is beyond the jurisdiction of the court issuing the process, the commanding officer must permit service or delivery of the process under the same conditions as when within the jurisdiction of the court for whatever legal effect it may have. The commanding officer or his designee must advise the person being served that he is not required to indicate acceptance of service, in writing or otherwise, although he may do so voluntarily. The person concerned must also be advised to consult legal counsel. Where process is forwarded to a commanding officer with the request that it be delivered to a person within his command, he may deliver it to the person named provided it is accepted voluntarily. In such a case, the person concerned must be informed that he is not required to accept service of the process but may do so voluntarily. The commanding officer is not required to act as a process server. Therefore, if the person named in the process does not voluntarily accept it, the process should be returned to the sender with a notation that the person named in the process refused to accept it.

### Arising from Official Duties

Whenever a government employee is served with Federal or State court civil or criminal process or pleadings, including traffic tickets, arising from actions performed in the course of his official duties, he must immediately deliver all process and pleadings served on him to his commanding officer. The commanding officer must then ascertain the facts surrounding the incident and with the advice of a Navy or Marine Corps judge advocate, if one is reasonably available, take action in accordance with JAGINST 5822.2 series, Subj: Civil suits against military or civilian personnel of the Department of the Navy resulting from the operation of motor vehicles while acting within the scope of their office or employment, and legal representation in other court proceedings. The government employee must be advised concerning his right to remove civil or criminal proceedings from State to Federal court under 28 U.S.C. 1442 and 1442a, his rights under the Federal Driver's Act (28 U.S.C. 2679B), and the contents of JAGINST 5822.2 series. Whenever a military member or civilian employee of the Department of the Navy is served with any process because of his official position, the Judge Advocate General must be notified by message or telephone. This notification must be confirmed by a letter report by the nearest appropriate command. The letter report must include the detailed facts which are the basis of the action.

### Process of Foreign Courts

Usually, the question of the amenability of military personnel, civilian employees, and the dependents of both stationed in a foreign country, to the service of process from courts of the host country will have been settled by an agreement between the United States and the foreign country concerned. Where service of process on a person; military, civilian, or dependent; is attempted within the command in a country with which the United States has no agreement on service of process, advice should be sought from the JAG. Individuals are not usually required to accept service of process outside the jurisdiction of the court from which the process issued. In such cases acceptance of the service is not compulsory, but may be voluntarily accepted. In exceptional cases where the United States has agreed that service of process will be accepted by persons located outside the geographic limits of the jurisdiction of the court from which the process issued, the provisions of the agreement will control. Under the laws of some countries, service of process is effected by the document being handed to the person for whom the service is intended. Service is considered to have taken place even if the person refuses to accept the legal document. If a commanding officer or other officer in the military service calls the serviceman to his office and personally hands or attempts to hand him the document, service is considered to have been effected, permitting the court to proceed to judgment. Therefore, on receipt of foreign process with a request that it be served upon a member of the command, the serviceman must be notified of the fact that a particular foreign court is attempting to serve process upon him and informed that he may ignore the process or come to the designated office and receive it. If the serviceman chooses to ignore the service, the commanding officer causes the document to be returned to the embassy or consulate of the foreign country with the notation that the serviceman had been notified that the document was in the office of the commanding officer, but that he chose to ignore it, and that no physical offer of service had been made. The commanding officer must also keep the JAG advised of all requests for service of process from a foreign court and the relevant details surrounding the process.

### Leave or Liberty for Personnel Served

Leave or liberty should normally be granted to personnel who are served with or accept process in order to permit them to comply with the process, provided their absence will not prejudice the best interests of the Navy.

### Report Where Service Not Allowed

Where service of process is not permitted, a report of the refusal to allow service and the reasons for the refusal must be forwarded by speedletter, or telephone if conditions warrant, to the SECNAV(JAG).

## PERSONNEL SUBPOENAED AS WITNESSES

Often members of the command may be subpoenaed by State, local, or Federal courts as witnesses. Whether they are authorized leave or liberty or issued TDY orders is governed by the following:

### By State or Local Court

Where military personnel or civilian employees are properly subpoenaed to appear as witnesses in State or local courts, they should be granted leave or liberty in order to comply with the process.

### By Federal Courts

Where naval personnel are required to appear as witnesses in a Federal court to testify on behalf of the Federal Government involving activities of the Navy, the CHNAVPERS, the CMC, or the JAG with respect to civilian employees, as appropriate, directs the activity to which the person is attached to issue temporary additional duty travel orders to the person concerned. The charges for these orders must be borne by the activity to which the witness is attached. In criminal actions where naval personnel are served with a subpoena to appear as a witness for the defendant and the fees and mileage required by Rule 17(d) of the Federal Rules of Criminal Procedures are tendered, the commanding officer may issue the person subpoenaed permissive travel orders authorizing attendance at the trial at no expense to the Government. In those cases where fees and mileage are not tendered, but the person subpoenaed still desires to attend the trial, the commanding officer may issue permissive travel orders at no cost to the Government. The person attending the proceeding should be advised that an agreement as to reimbursement for any expense he incurs should be made between himself and the party desiring his attendance as no reimbursement should be expected from the Government.

## NAVAL PRISONERS AS WITNESSES OR PARTIES

In instances where Federal, State, or Territorial authorities desire the attendance of a naval prisoner as a witness in a criminal case, a request for the requested person's attendance should be submitted to the SECNAV(JAG). If the request is deemed proper by JAG, the requested naval prisoner may attend the proceeding. This procedure avoids the necessity of the court issuing a writ of habeas corpus ad testificandum (a writ which requires the production of a prisoner to testify before a court of competent jurisdiction). Current policy of the Department of the Navy precludes authorizing the attendance of naval prisoners in Federal, State, or Territorial court in private litigation. However, the deposition of a naval prisoner may be taken in such a case under any reasonable conditions as may be imposed by the command concerned.

## PERSONNEL INTERVIEW PRIOR TO LITIGATION

Before personnel may be interviewed preliminary to civil litigation, permission of the JAG must be obtained. When practicable, the JAG arranges for all desired personnel to be interviewed at one time. Interviews of personnel must be conducted in the presence of an officer designated by JAG. If statements from the interviewed personnel are desired by the party(ies) in interest, the statements must be prepared under the direction of the officer designated by JAG. A signed copy of the statement(s) must be furnished (at no cost to the Government) to the person making the statement, the Director of the Law Center involved, and the JAG. No inquiry may be pursued which would disclose or compromise classified material or otherwise result in detriment to the interests of the United States. Requests for interview of personnel in which the United States is a party in any related litigation or where its interests are involved must be denied in consonance with current regulations of the JAG. Inquiries which relate to admiralty matters or to maritime litigation, whether involving naval vessels or not, must be sent to the Office of the JAG (Admiralty) for appropriate action.

## SUITS AGAINST THE UNITED STATES

The primary responsibility for representing the United States in any litigation in which it has an interest rests with the Attorney General. In order to keep the Attorney General informed, the JAG and the General Counsel maintain close liaison with the Justice Department concerning actions arising out of the operations of the Naval Establishment. Reports are required of all suits against the United States or its prime contractors or subcontractors on contracts under which the Government may be obligated to make reimbursement or in cases where the United States is, in legal effect, the defendant. When a command becomes aware of the commencement of any civil litigation or legal proceedings which arise out of the operations of the Naval Establishment, the command concerned must make a report of the circumstances to the JAG by the most expeditious means, using message, telephone, or letter, as warranted by the circumstances. The report must contain as much of the following information as may be pertinent:

(1) Names of parties to the proceeding.

(2) Nature of the action.

(3) Designation of the tribunal in which the proceeding is brought.

(4) Docket number of case, if available.

(5) Names of person or persons on whom service of process was made, method of service, and dates.

(6) Explanation of Government's interest in the proceeding.

(7) Date by which the defendant must plead or otherwise respond.

(8) Nature of the principal defense, if known.

(9) Status of the defendant as being a Government officer, employee, agent, contractor, non-appropriated fund activity employee, et cetera.

(10) Amount claimed, or other relief sought.

(11) If a contractor is involved, the contract number, and information as to whether the contractor desires or is willing to permit the suit to be defended by a United States Attorney.

(12) Data as to whether the subject matter of the suit is covered by insurance; if so, whether covered to the amount claimed, and whether the insurance carrier will accept full responsibility for defense of the suit.

(13) If action is brought in a foreign country, a recommendation as to qualified local attorneys, English-speaking if possible, available for retention to defend the interests of the United States.

(14) Other available information as may be necessary for a full understanding of the action and to enable the Government to prepare a defense.

The report containing the information called for above should be made to the General Counsel, Navy Department, rather than to the JAG in all cases concerning business and commercial law, including cases relating to:

(1) The acquisition, custody, management, transportation, taxation and disposition of real and personal property, and the procurement of services.

(2) Operations of the Military Sealift Command.

(3) The Office of the Comptroller of the Navy.

(4) Procurement matters concerning patents, inventions, trademarks, copyrights, royalty payments, and similar matters.

(5) Industrial security.

If all pertinent information is not available when the initial report is made, supplemental reports should be made to complete or update the initial report.

The primary source of information and regulations concerning service of process in the naval establishment is contained in Chapter XIII of the *JAG Manual*. You should be generally knowledgeable of the contents of this section of the *Manual*.

## PRODUCTION OF OFFICIAL RECORDS

Frequently, official Department of the Navy records are desired for use by parties to civil litigation. In the following discussion we shall take a look at the procedures and requirements involved in furnishing these records. A term often used in the process of obtaining records is "subpoena duces tecum." *Black* defines "subpoena duces tecum" as: "A process by which the court, at the instances of a suitor, commands a witness who has in his possession or control some document or paper that is pertinent to the issues of a pending controversy, to produce it at the trial."

The release and furnishing of official records under varying circumstances is discussed below.

### IN RESPONSE TO COURT ORDER

Where unclassified naval records are desired by the parties to a legal proceeding, the parties must be informed that the records requested, or certified copies, may be obtained by forwarding a court order calling for the particular records desired to the SECNAV, or other custodian of the records. Compliance with a court order calling for records is effected by furnishing certified copies of the records to the clerk of the court out of which the order was issued. Original records may not be removed from the custody of the person producing them, but copies may be placed in evidence. On written request of all the parties in interest, records which would be produced in response to a court order may be furnished without a court order except as noted below. Whenever compliance with a court order for production of Navy records is considered inappropriate for any reason, such as when the records contain privileged or classified information, the records and subpoena should be forwarded to the SECNAV(JAG) for action and the parties to the suit should be notified accordingly.

#### In Custody of Records Center

Court orders, subpoenas duces tecum, and other legal documents demanding information from or production of service or medical records in the custody of the National Personnel Records Center involving former Navy and Marine Corps personnel must be served upon the General Services Administration (GSA) in St. Louis, Missouri, rather than the Department of the Navy. However, the request must be forwarded to the SECNAV(JAG) by GSA when the United States (Department of the Navy) is one of the litigants; when the case involves a person or persons who are or have been senior officers of the Navy; and in other cases considered to be of special significance to the JAG or the SECNAV.

### Exceptions

Evidentiary material from investigations conducted pursuant to regulations contained in the *JAG Manual* as well as service, employment, pay or medical records, including medical records of dependents, may be furnished for use in Federal, State, or local courts except where in conflict with any restrictions concerning confidential (as distinguished from classified) or privileged matter. These types of records may be released without specific authorization from SECNAV. However, where travel is involved, it must be without expense to the Government.

### Records of Civilian Employees

Production of medical certificates or other medical reports concerning civilian employees is controlled by the provisions of Executive Order 10561, 19 F.R. 5963, and implemented by Chapters 294 and 339.1-4 of the *Federal Personnel Manual.* Article 23-255(6) of the *Manual of the Medical Department* also contains these provisions. Records of civilian employees other than medical records may be produced upon receipt of a court order without specific authority from SECNAV, provided no classified or confidential material, such as loyalty or security records, is involved. Records concerning compensation benefits administered by the Bureau of Employees' Compensation may not be disclosed without written approval of that Bureau (20 CFR 1.21). When furnishing information in response to a court order, certified copies rather than originals should be furnished and, where original records are to be produced, the assistance of a U.S. Attorney or U.S. Marshall should be requested so that custody of the records may be maintained.

## IN ABSENCE OF COURT ORDER

Whether or not litigation is involved, naval personnel, civilian employees of the Navy, their representatives, or other properly interested parties may be furnished with copies of records or with information from those records relating to death, personal injury, loss, or property damage to or involving such personnel without having to resort to obtaining a court order, provided the interests of the United States are not prejudiced thereby. With the exception of requests for medical records, for certain traffic reports, and for records concerning matters under the cognizance of the General Counsel, all of which are further discussed below, requests for records or information by personnel concerned must be referred to the District Judge Advocate, the Area Coordinator, or to the Judge Advocate General. Findings of fact, opinions, and recommendations, or endorsements thereto of investigative reports may not be released outside the Department of the Navy without approval from either the SECNAV or the JAG.

### Medical Records

Section 66.1-66.2 of Title 32 of the *CFR* sets forth DOD policy, implemented by the *Manual of the Medical Department,* for processing requests for medical records. In processing a request for medical records, if it appears that the interests of the United States may be involved, such request must be referred to the JAG for a determination. Again, Executive Order 10561, 19 F.R. 5963 (reprinted in *MAN-MED* Article 23-255(6)) controls concerning requests for production of medical certificates or other medical reports concerning civilian personnel. The Surgeon General has been designated by the SECNAV as the official responsible for execution of DOD policies in releasing medical records of members or former members of the Navy. Commanding officers of naval hospitals and dispensaries have been authorized to release medical records physically located within their commands directly to the injured member or his representative, except as limited by Chapter 23, *MAN-MED.*

### Traffic Accident Reports

Provided the interests of the United States are not prejudiced, copies of traffic accident investigative reports where service personnel are not involved and where no government vehicle is involved may be released to any properly interested party or to his representative. However, if it appears that the United States may be involved, the request must be referred to the staff judge advocate of the naval district or area coordinator concerned, or the JAG. Charges for reports furnished must be made in accordance with the schedule of fees published in the *NAVCOMPT Manual*, paragraph 035887. The minimum fee is $3.00. All fees collected must be credited as set forth in the *NAVCOMPT Manual*, paragraph 043145.

## OFFICE OF GENERAL COUNSEL MATTERS

The General Counsel, Department of the Navy, has been designated to act for SECNAV in releasing or producing, and authorizing the release or production of official records or copies thereof in matters within the assigned responsibilities of the General Counsel. These responsibilities are discussed above under "SUITS AGAINST THE UNITED STATES."

## SECURITY MATTERS

Classified information may not be released for introduction in civil court proceedings except when release has been approved by the JAG, or the General Counsel concerning matters for which he has primary responsibility. Orders or requests for classified records should be forwarded to the JAG, or General Counsel, who will coordinate with the Chief of Naval Operations (DNI) in determining whether the records may be released. See Chapter XV, Section 3, Article N15-301 of the *Department of the Navy Supplement to the DOD Information Security Program Regulation* for further information.

### Military Personnel Records

Officer and enlisted personnel records are deemed confidential and may be released only to persons properly and directly concerned, including the serviceman himself, or his personal representative who presents proper proof that he is the personal representative of the serviceman concerned. Of course, these records may be released in response to a court order or subpoena duces tecum, as discussed previously in this chapter.

### Requests for Personnel Records

The serviceman concerned, or his personal representative, may obtain access to health and medical records by applying to the Chief, Bureau of Medicine And Surgery. Applications for access to personnel records should be addressed to the CHNAVPERS. Application may be made in person or in writing.

## CHAPTER 11

# ADMINISTRATIVE DISCHARGES

This chapter is designed to give you a general working knowledge of the regulations and procedures involved in processing personnel for administrative discharges. At the time of this writing, statistics show that about 40,000 personnel are processed for administrative discharges each year. Latest figures available show that about 1,700 personnel are administratively separated as a result of these discharge proceedings *each month*.

Among your duties as a Legalman is the processing of administrative discharge cases. From the statistics given above, it should be obvious that you can expect considerable business in the administrative discharge department. It will, therefore, be much to your advantage to become completely familiar with the regulations and procedures involved in administrative discharge processing.

Administrative discharge boards are convened by commanding officers to hear cases and make recommendations to higher authority with respect to discharge or retention of certain individuals. These boards function to make recommendations to the Chief of Naval Personnel for further evaluation and final disposition.

## TYPES OF CASES HEARD

There are three general types of cases heard by administrative discharge boards if the member elects to have his case heard before a board of officers. These are (1) unsuitability, if the member has eight or more years of continuous active military service, (2) unfitness, and (3) misconduct. In each of these cases the member must consult with certified lawyer counsel (Art. 27b, UCMJ) prior to requesting or waiving his rights. Counsel must witness the statement of awareness and request for privileges.

## UNSUITABILITY

Processing by reason of unsuitability includes the following: (1) Alcohol abuse, (2) personal use of drugs other than alcoholic beverages, (3) financial irresponsibility, (4) character and behavior disorders (as determined by medical authority), (5) homosexual or other aberrant tendencies, (6) inaptitude (lack of general adaptability, want of readiness of skill, unhandiness, or inability to learn), and (7) apathy, defective attitudes, or inability to expend effort constructively which is apparently beyond the control of the member.

The Chief of Naval Personnel has authorized commanding officers and officers in charge in the grade of lieutenant commander or above to discharge by reason of unsuitability enlisted members who have been diagnosed by a medical officer as having a character or behavior disorder. However, the following stipulations must be met before the discharge may be effected:

- The member must not have served on active duty for more than one year.
- The severity of the disorder must render the member incapable of serving adequately.
- The member must have been given a reasonable time to adjust to service life.
- The diagnosis must not be associated with sexual abnormalities, drug involvement, or alcohol involvement.
- The member must not object in writing to such discharge.

A report must be made in each case in which a discharge is effected under this authority. See BUPERSMAN 3420180.7 for information on the report to be made.

## UNFITNESS

Processing by reason of unfitness includes the following:

(1) Frequent involvement of a discreditable nature with civil or military authorities, (2) an established pattern for shirking, (3) an established pattern showing dishonorable failure to pay just debts, (4) an established pattern showing dishonorable failure to contribute adequate support to dependents or failure to comply with orders, decrees, or judgments of a civil court concerning support of dependents, (5) homosexual acts (as distinguished from homosexual tendencies) (see SECNAVINST 1900.9 series for controlling policy), (6) sexual perversion, other than homosexuality, including but not limited to lewd and lascivious acts, sodomy, indecent exposure, indecent acts with or assault upon a child, or other indecent acts or offenses, (7) drug abuse (the illegal or wrongful possession, use, transfer, or sale of any narcotic substance, marijuana, or controlled substance), and (8) unsanitary habits (repeated venereal disease infections, unclean body, et cetera).

Processing is MANDATORY in those cases falling within categories (5) and (6) above. Processing is recommended (but not required) in cases of drug abuse (category 7 above). In addition, except for drug-exemption cases processed in accordance with SECNAVINST 6710.2 series, drug-abuse cases normally must be investigated by the Naval Investigative Service as required in SECNAVINST 6710.1 series.

Members processed for unfitness are subject to an undesirable discharge. However, a less favorable discharge than that recommended by an administrative discharge board may not be authorized. Subsequent to processing a more creditable discharge may be authorized if the circumstances of the case so warrant.

## MISCONDUCT

Processing by reason of misconduct includes the following:

(1) Conviction by civil authorities (foreign or domestic) or action taken which is tantamount to a finding of guilty of an offense that:

a. Authorizes imposing a maximum penalty under the UCMJ of death or confinement in *excess* of one year;

b. involves moral turpitude; i.e., those offenses involving fraud or deceit;

c. involves sexual perversion;

d. involves drug abuse; or

e. where the offender is adjudged a juvenile delinquent, wayward minor, or youthful offender or is placed on probation or punished in any way as the result of any offenses listed in a. through d. above;

(2) Procurement of a fraudulent enlistment, induction, or period of active service through deliberate material misrepresentation, omission, or concealment which, if known at the time, might have resulted in rejection. (The enlistment of a minor with false representation as to age or without proper consent is NOT, in itself, a fraudulent enlistment); (3) Prolonged unauthorized absence, when continuous unauthorized absence of one year or more has been established.

Processing is mandatory for those cases falling within categories (1) and (2) above, while, as a general rule, the Chief of Naval Personnel will initiate action for category (3).

Members processed for misconduct are subject to an undesirable discharge. However, a less favorable discharge than that recommended by an administrative discharge board may not be authorized. Subsequent to processing a more creditable discharge may be authorized if the circumstances of the case so warrant.

## COMPOSITION OF BOARD AND APPOINTMENT OF RECORDER AND COUNSEL FOR THE RESPONDENT

### COMPOSITION AND APPOINTMENT OF BOARD

The board is appointed by the commanding officer of the respondent (member being processed) and must consist of not less than three commissioned officers, on active duty, at least one of whom must be serving in the grade of lieutenant commander or higher. At this point, you should note that an even number of officers should not be appointed to the board. The reason for this should be obvious—so that split decisions of the board may be avoided. Officers appointed to an administrative discharge board may be Regular or Reserve officers (on active duty) of the Navy or Marine Corps. See figure 11-1 for an example of an order appointing an administrative discharge board.

### Special Considerations

When the respondent in the hearing is a woman, the board must include a woman officer. This is not to say that women officers may not serve on boards considering the cases of male personnel. Likewise, if the respondent under consideration is a reservist, the board should be composed of a majority of Naval Reserve officers if such officers are reasonably available. In those cases where a majority of such officers is not available, however, the board must include not less than one Reserve officer among its members. In the case of a respondent who is a member of a minority group, the board must include a member of that minority group, if feasible.

## APPOINTMENT OF RECORDER

The commanding officer also appoints an officer in an active duty status to serve as recorder for the board. The recorder is responsible for the clerical and preliminary work of the hearing but is NOT a member of the board.

## APPOINTMENT OF COUNSEL FOR RESPONDENT

A member who is being processed by reason of unfitness, misconduct, security, or who has eight years continuous active duty and is being processed by reason of unsuitability is entitled to military lawyer counsel (qualified in the sense of Article 27(b) (1), UCMJ) unless the commanding officer or other designated authority certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substituted nonlawyer counsel. The alternate paragraph 2 in figure 11-1 will serve as the required certification in the record of proceedings. The respondent may select a person, in addition to appointed military counsel, to represent him at the hearing. If the commanding officer or other proper authority determines that the person requested is reasonably available, the respondent may be represented by him. Civilian counsel may also be retained by the respondent at his own expense. If the respondent retains civilian counsel at his own expense, or is represented by counsel selected by him, he may, if he chooses, excuse his appointed military counsel.

## DUTIES OF THE BOARD AND OTHER HEARING PERSONNEL

In the following paragraphs we shall take a look at some of the major duties and responsibilities of the board and other personnel of the hearing, i.e., the recorder, counsel for the respondent, and most important from your viewpoint, YOU.

## DUTIES OF THE BOARD

The board functions as an administrative rather than a judicial body. Strict rules of evidence need not be observed. However, Article 31, UCMJ, (see Chapter 5) is to be complied with. The board should consider any matter presented which is relevant to the issue whether written or oral, sworn or unsworn. The board relies on its own judgment and experience in determining the weight and creditability to be given the evidence received. The proceedings of the board should not be in the nature of a formal fact-finding tribunal or judicial trial, but should be formalized to the extent necessary to ensure that the respondent has a full opportunity to present his case.

After considering all the evidence, the board must recommend that the member either be retained or be discharged. If discharge is recommended the reason must be stated in the report along with the type discharge considered appropriate by the board. At this point you should note that it is not within the purview of the administrative discharge board to recommend "probation." This is the prerogative of the Chief of Naval Personnel. The primary duty of the board is to hear all available pertinent matter, to make its findings, and to recommend either retention or discharge.

## SENIOR MEMBER OF THE BOARD

The senior member of the board presides at the hearing and is responsible for its proper conduct. Prior to the hearing, the senior member must ensure that all members of the board are familiar with the provisions of pertinent articles of the *Bureau of Naval Personnel Manual.* He determines, in conjunction with the recorder for the board and the commanding officer, the time, date, and place the hearing is to be held. The senior member may request that a reporter be detailed to record the proceedings verbatim if lengthy testimony is expected, if a large number of witnesses will testify, or if there is any other good reason for making a verbatim record. He is responsible for ensuring that any objection made and the basis for the objection are noted in the record, but he should not make a formal ruling on the objection. He is also responsible for ensuring that the hearing is conducted in an atmosphere of decorum and dignity. The senior member authenticates the record of proceedings and orally advises the respondent of the findings, the recommendation of the board, and the type of discharge recommended, if applicable.

## DUTIES OF RECORDER

The recorder is responsible for the clerical and preliminary work of the hearing. He conducts a preliminary review of any available evidence and interviews prospective witnesses prior to the hearing. Where appropriate, he should warn witnesses of their rights under Article 31, UCMJ, prior to the interview. After consultation with the commanding officer and the senior member of the board, the recorder is responsible for notifying the board members and the respondent and his counsel of the time, date, and place of the hearing and of the witnesses expected to be present.

He also ensures that arrangements are made for attendance at the hearing of all witnesses for the government, and for all military witnesses for the respondent. Here, you should note that no authority exists for issuing subpoenas to compel the attendance of witnesses at administrative discharge board proceedings. Appearances of civilian witnesses, including members of the Armed Forces on inactive duty, may be arranged for on a voluntary basis only. It is Navy policy not to make payment to witnesses for reimbursement for travel or other expenses of witnesses at administrative hearings. Such witnesses may not be paid witness fees or be subpoenaed as a matter of law. Therefore, if and when civilian witnesses are invited to appear and testify at these hearings, they must be advised that no reimbursement for any expenses involved can be paid. The recorder is responsible for arranging for the attendance of any desired active duty military personnel at the hearing, if they are reasonably available. Testimony of active duty military personnel not in the immediate area should be obtained and presented in the form of written statements, if needed.

The recorder is further responsible for obtaining and assembling pertinent directives, regulations, and records for use by the board and for verifying the information concerning the respondent. He is, in addition, charged with the responsibility for preparation of the record of the hearing.

You, as a Legalman, will work closely with the recorder and assist him in any way possible in his preliminary work. No doubt you will be the person taking care of notifying all concerned of the time, date, and place of the hearing, gathering pertinent directives and regulations, and generally assisting the recorder with the preliminary paperwork. You should expect and be prepared to assist him in any way possible in his preliminary work. If a verbatim record is required, you will be particularly significant to the conduct of the hearing. As reporter for the hearing, you will be expected to record the hearing and transcribe a verbatim record from your recording or notes. It is entirely possible, however, that after recording the hearing verbatim, you may be directed to prepare only a summary of the testimony. Finally, it is your job to assist the recorder in the preparation of an accurate and adequate record of the proceedings.

### DUTIES OF COUNSEL FOR THE RESPONDENT

Counsel for the respondent is charged with representing the respondent throughout the course of the administrative discharge proceeding. Inherent in these duties is the requirement that counsel act in the best interests of the respondent at all stages of the proceedings. He advises the respondent of his rights and presents his case before the board. He cross-examines witnesses for the government and presents witnesses for the respondent. His duty is to uphold the rights of the respondent and act in his best interests.

### CLERICAL ASSISTANCE AND SUPPORT

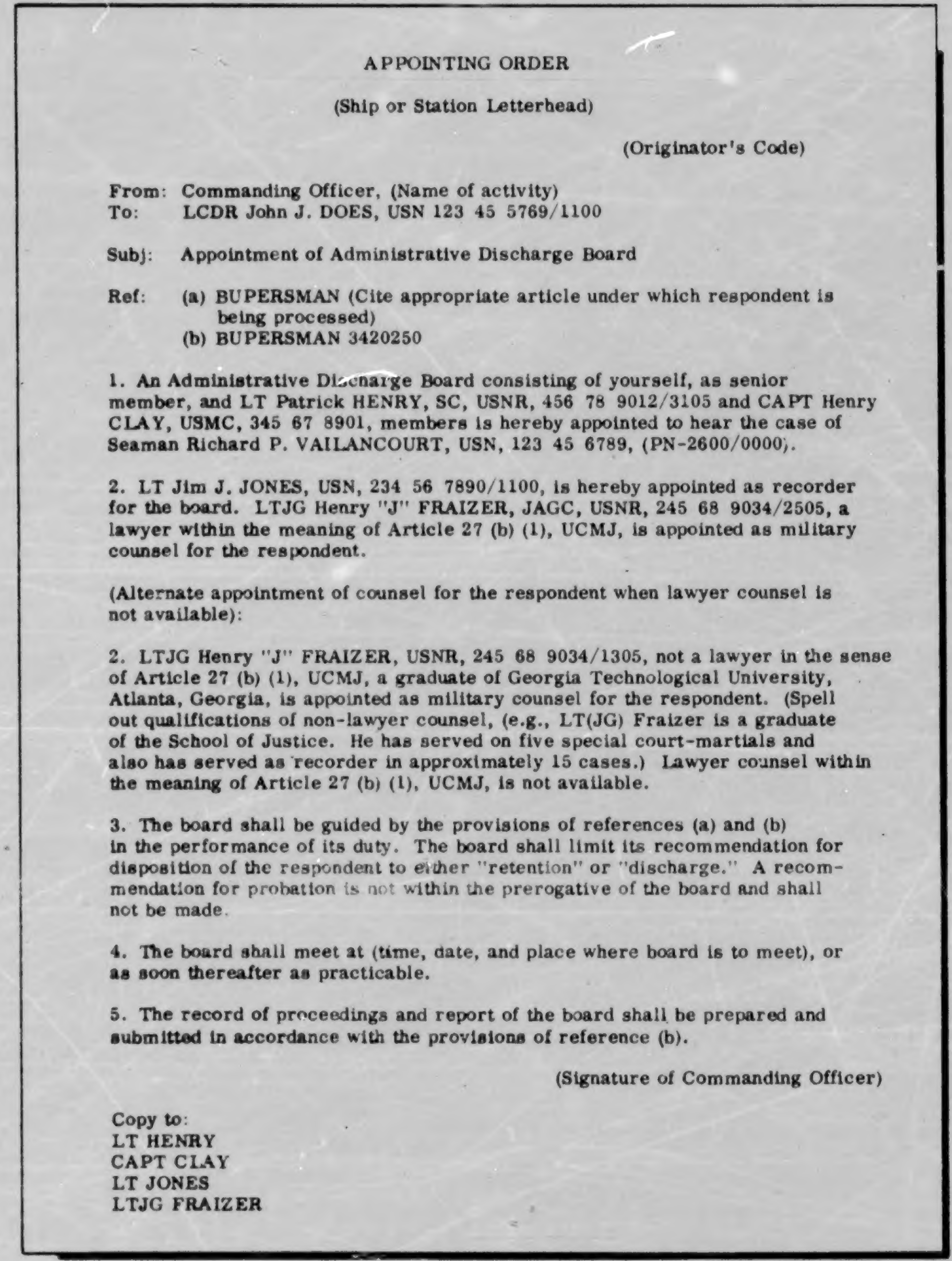
This is where you, as a Legalman, really come into the picture. Right from the very beginning you will find yourself involved in the case. Possibly you will have had occasion to handle some related paperwork concerning the respondent, e.g., an incident report or investigation or even a captain's mast. In all probability the reason(s) for processing a particular respondent will be familiar to you through your prior knowledge of his problems which are the basis for his being processed. At any rate, you should expect to prepare and distribute the order appointing the discharge board as well as letters of notification and other miscellaneous documents for the board. Examples of an appointing order and letters of notification are included as figures 11-1, 11-2, and 11-4. Figures 11-3 and 11-5 show statements of awareness. Your duties will also include notifying the interested parties of the time, date, and place the hearing is to be held. You will, no doubt, also be involved in obtaining records and documents required by the recorder and the board. If you are detailed as reporter for the board, you will be expected to take the proceedings verbatim to prepare the transcript. Chapter 4 deals with legal reporting and should be reviewed for reporting tips and procedures. If you were not detailed as reporter for the board, you will prepare the record from the recorder's notes. You will also be expected to assemble the necessary records and complete the processing procedures including appropriate service record entries. The record of proceedings will vary slightly in content and documentation required according to the primary reason for processing, i.e., unsuitability, unfitness, or misconduct. See figures 11-6 and 11-7 for a list of contents of the typical record and report of the board in each of these categories. The appropriate article of the *Bureau of Naval Personnel Manual* should be carefully checked to ensure that all required documents are appended to and forwarded with the record of proceedings. Sample letters of transmittal are shown in figures 11-8 through 11-11.

## DISCHARGES

As a Legalman, you should be familiar with the different kinds of discharges and the rights and benefits which may accrue to or be lost by a member as a result of the type of discharge he receives. There are two general kinds of discharges; i.e., administrative and punitive. While punitive discharges may be awarded only as a result of a special or general court-martial sentence, they are included in this chapter for comprehensive coverage and convenience in presentation. See Chapter 9 for more information on punitive discharges.

Article 1010150 of the *Bureau of Naval Personnel Manual* requires that enlisted personnel be advised of the various types of discharges, the basis for the issuance of each, and the possible effects of each type with respect to reenlistment, civilian employment, veterans' benefits, and related matters. This advice is to be given each time Article 137, *UCMJ*, is explained; i.e., for each enlistment, extension of enlistment, reenlistment, or entrance on active duty or within six days thereafter, and upon completion of six months active duty.

Figure 11-12 shows the different kinds of discharges awarded along with the various rights and benefits accruing under each. Copies of this chart suitable for display may be ordered through the Navy Supply System (Stock No. 0106-095-4030).



APPOINTING ORDER

(Ship or Station Letterhead)

(Originator's Code)

From: Commanding Officer, (Name of activity)
To: LCDR John J. DOES, USN 123 45 5769/1100

Subj: Appointment of Administrative Discharge Board

Ref: (a) BUPERSMAN (Cite appropriate article under which respondent is being processed)
(b) BUPERSMAN 3420250

1. An Administrative Discharge Board consisting of yourself, as senior member, and LT Patrick HENRY, SC, USNR, 456 78 9012/3105 and CAPT Henry CLAY, USMC, 345 67 8901, members is hereby appointed to hear the case of Seaman Richard P. VAILANCOURT, USN, 123 45 6789, (PN-2600/0000).

2. LT Jim J. JONES, USN, 234 56 7890/1100, is hereby appointed as recorder for the board. LTJG Henry "J" FRAIZER, JAGC, USNR, 245 68 9034/2505, a lawyer within the meaning of Article 27 (b) (1), UCMJ, is appointed as military counsel for the respondent.

(Alternate appointment of counsel for the respondent when lawyer counsel is not available):

2. LTJG Henry "J" FRAIZER, USNR, 245 68 9034/1305, not a lawyer in the sense of Article 27 (b) (1), UCMJ, a graduate of Georgia Technological University, Atlanta, Georgia, is appointed as military counsel for the respondent. (Spell out qualifications of non-lawyer counsel, (e.g., LT(JG) Fraizer is a graduate of the School of Justice. He has served on five special court-martials and also has served as recorder in approximately 15 cases.) Lawyer counsel within the meaning of Article 27 (b) (1), UCMJ, is not available.

3. The board shall be guided by the provisions of references (a) and (b) in the performance of its duty. The board shall limit its recommendation for disposition of the respondent to either "retention" or "discharge." A recommendation for probation is not within the prerogative of the board and shall not be made.

4. The board shall meet at (time, date, and place where board is to meet), or as soon thereafter as practicable.

5. The record of proceedings and report of the board shall be prepared and submitted in accordance with the provisions of reference (b).

(Signature of Commanding Officer)

Copy to:
LT HENRY
CAPT CLAY
LT JONES
LTJG FRAIZER

192.79

Figure 11-1.–Appointing Order for Administrative Discharge Board.

LETTER OF NOTIFICATION

(Ship or Station Letterhead)

(Originator's Code)

From: Commanding Officer, (Name of activity)
To: SN Richard P. VAILANCOURT, USN, 123 45 6789, (PN-2600/0000)

Subj: Processing for administrative discharge by reason of unsuitability; notification of

Ref: (a) BUPERSMAN 3420180

Encl: (1) Statement of Awareness

1. You are hereby notified that you are being considered for administrative discharge by reason of (list one or more of the reasons listed in reference (a)), in accordance with provisions of reference (a).

2. If you desire to do so, you are entitled to make a statement in your own behalf. If you desire counsel will be made available to assist you in this matter.

3. You are directed to indicate on enclosure (1) whether you desire to avail yourself of this privilege and return enclosure (1) to (state to whom it should be returned; e.g., the Administrative Officer, the Legal Officer, etc.) by (date). Your statement, should you elect to make one, should be attached to enclosure (1).

4. If you should elect to make a statement, and if you need more time than that allowed in paragraph 3 to complete your statment, you are directed to contact the (Administrative Officer, Legal Officer, etc.) to arrange for an extension of the due date.

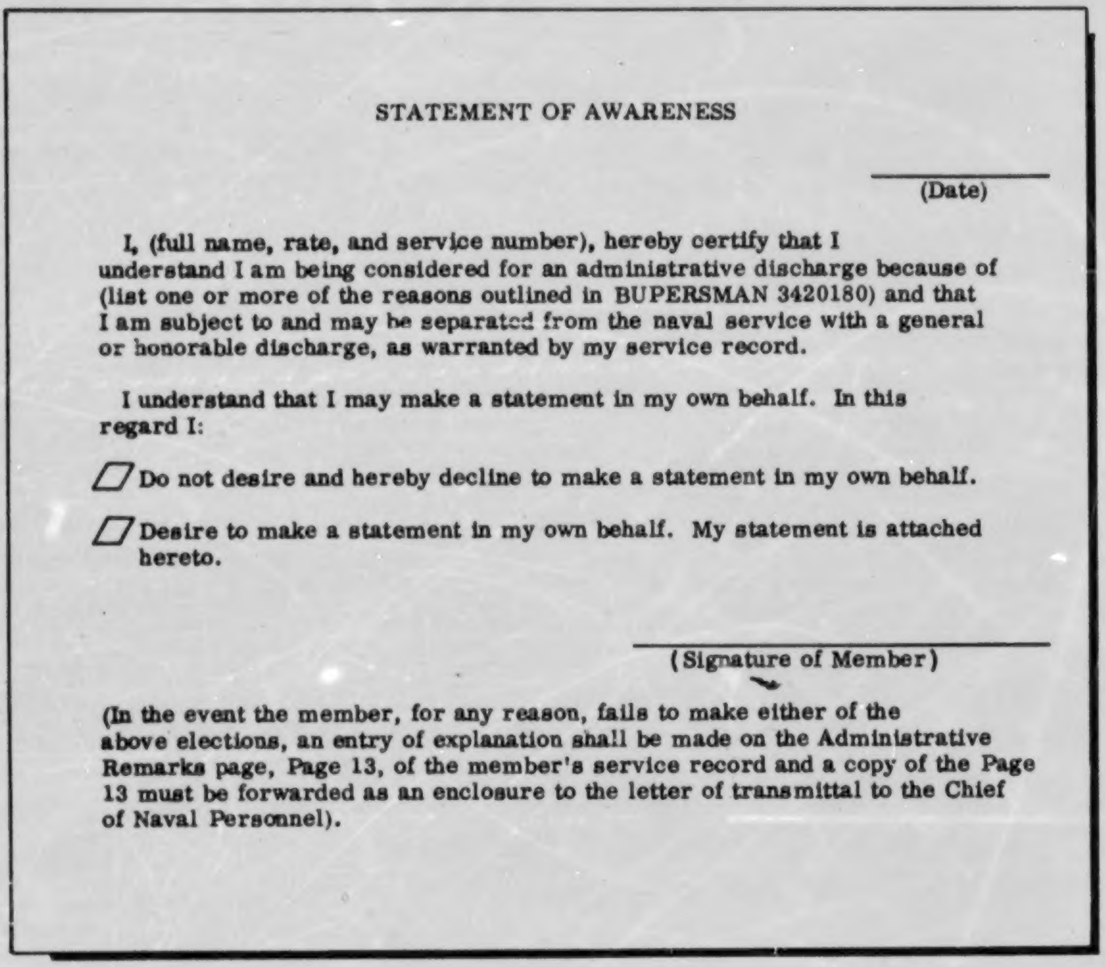
(Signature of Commanding officer)

Copy to:
(Administrative Officer or Legal Officer)

(Enclosure (1) to this letter is shown as Figure 11-3).

192.80

Figure 11-2.—Letter of Notification (Processing for UNSUITABILITY with less than eight years service).



STATEMENT OF AWARENESS

(Date)

I, (full name, rate, and service number), hereby certify that I understand I am being considered for an administrative discharge because of (list one or more of the reasons outlined in BUPERSMAN 3420180) and that I am subject to and may be separated from the naval service with a general or honorable discharge, as warranted by my service record.

I understand that I may make a statement in my own behalf. In this regard I:

☐ Do not desire and hereby decline to make a statement in my own behalf.

☐ Desire to make a statement in my own behalf. My statement is attached hereto.

(Signature of Member)

(In the event the member, for any reason, fails to make either of the above elections, an entry of explanation shall be made on the Administrative Remarks page, Page 13, of the member's service record and a copy of the Page 13 must be forwarded as an enclosure to the letter of transmittal to the Chief of Naval Personnel).

192.81

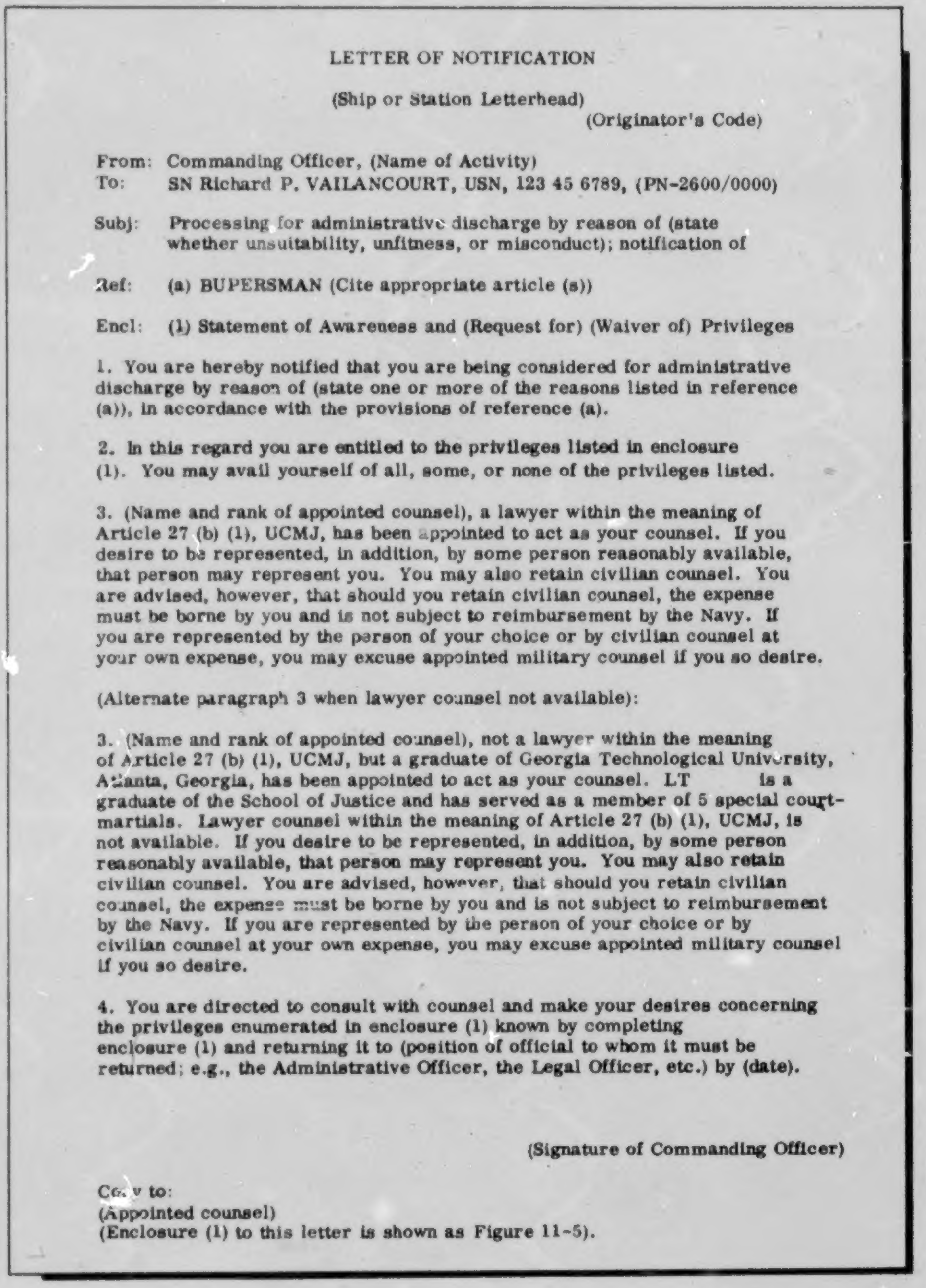
**Figure 11-3.–Statement of Awareness (Processing for UNSUITABILITY with less than eight years service).**

## MISCELLANEOUS MATTERS

Let's now take a look at some of the matters related to administrative discharges which have not been previously covered. Included for your convenience is a "where to find it" section in which reference is made to the various regulations you will need to be familiar with. This list is by no means conclusive, but should prove to be very helpful to you.

## AVOIDANCE OF UNDESIRABLE DISCHARGE

Members being processed for unfitness or misconduct are subject to undesirable discharge. Let's assume that Seaman Doe is being processed for misconduct and that he elected to have an administrative discharge board hearing. Let's assume also that Seaman Doe doesn't really care for military life and actually wants a discharge–



LETTER OF NOTIFICATION

(Ship or Station Letterhead)
(Originator's Code)

From: Commanding Officer, (Name of Activity)
To: SN Richard P. VAILANCOURT, USN, 123 45 6789, (PN-2600/0000)

Subj: Processing for administrative discharge by reason of (state whether unsuitability, unfitness, or misconduct); notification of

Ref: (a) BUPERSMAN (Cite appropriate article (s))

Encl: (1) Statement of Awareness and (Request for) (Waiver of) Privileges

1. You are hereby notified that you are being considered for administrative discharge by reason of (state one or more of the reasons listed in reference (a)), in accordance with the provisions of reference (a).

2. In this regard you are entitled to the privileges listed in enclosure (1). You may avail yourself of all, some, or none of the privileges listed.

3. (Name and rank of appointed counsel), a lawyer within the meaning of Article 27 (b) (1), UCMJ, has been appointed to act as your counsel. If you desire to be represented, in addition, by some person reasonably available, that person may represent you. You may also retain civilian counsel. You are advised, however, that should you retain civilian counsel, the expense must be borne by you and is not subject to reimbursement by the Navy. If you are represented by the person of your choice or by civilian counsel at your own expense, you may excuse appointed military counsel if you so desire.

(Alternate paragraph 3 when lawyer counsel not available):

3. (Name and rank of appointed counsel), not a lawyer within the meaning of Article 27 (b) (1), UCMJ, but a graduate of Georgia Technological University, Atlanta, Georgia, has been appointed to act as your counsel. LT is a graduate of the School of Justice and has served as a member of 5 special court-martials. Lawyer counsel within the meaning of Article 27 (b) (1), UCMJ, is not available. If you desire to be represented, in addition, by some person reasonably available, that person may represent you. You may also retain civilian counsel. You are advised, however, that should you retain civilian counsel, the expense must be borne by you and is not subject to reimbursement by the Navy. If you are represented by the person of your choice or by civilian counsel at your own expense, you may excuse appointed military counsel if you so desire.

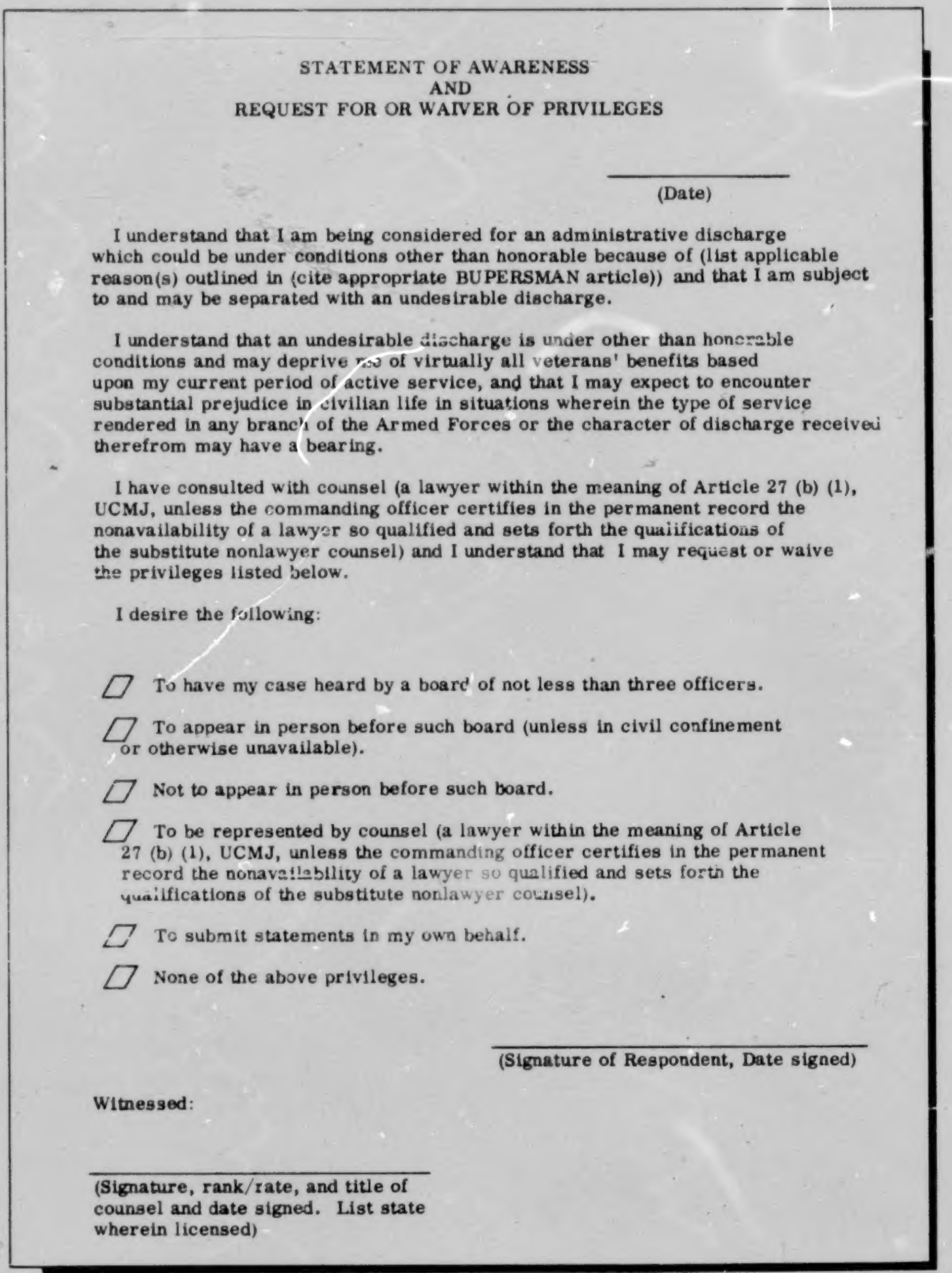
4. You are directed to consult with counsel and make your desires concerning the privileges enumerated in enclosure (1) known by completing enclosure (1) and returning it to (position of official to whom it must be returned; e.g., the Administrative Officer, the Legal Officer, etc.) by (date).

(Signature of Commanding Officer)

Copy to:
(Appointed counsel)
(Enclosure (1) to this letter is shown as Figure 11-5).

192.82

Figure 11-4.—Letter of Notification (Processing for UNSUITABILITY (eight or more years service, UNFITNESS, AND MISCONDUCT).



STATEMENT OF AWARENESS
AND
REQUEST FOR OR WAIVER OF PRIVILEGES

________________
(Date)

I understand that I am being considered for an administrative discharge which could be under conditions other than honorable because of (list applicable reason(s) outlined in (cite appropriate BUPERSMAN article)) and that I am subject to and may be separated with an undesirable discharge.

I understand that an undesirable discharge is under other than honorable conditions and may deprive me of virtually all veterans' benefits based upon my current period of active service, and that I may expect to encounter substantial prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of discharge received therefrom may have a bearing.

I have consulted with counsel (a lawyer within the meaning of Article 27 (b) (1), UCMJ, unless the commanding officer certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substitute nonlawyer counsel) and I understand that I may request or waive the privileges listed below.

I desire the following:

☐ To have my case heard by a board of not less than three officers.

☐ To appear in person before such board (unless in civil confinement or otherwise unavailable).

☐ Not to appear in person before such board.

☐ To be represented by counsel (a lawyer within the meaning of Article 27 (b) (1), UCMJ, unless the commanding officer certifies in the permanent record the nonavailability of a lawyer so qualified and sets forth the qualifications of the substitute nonlawyer counsel).

☐ To submit statements in my own behalf.

☐ None of the above privileges.

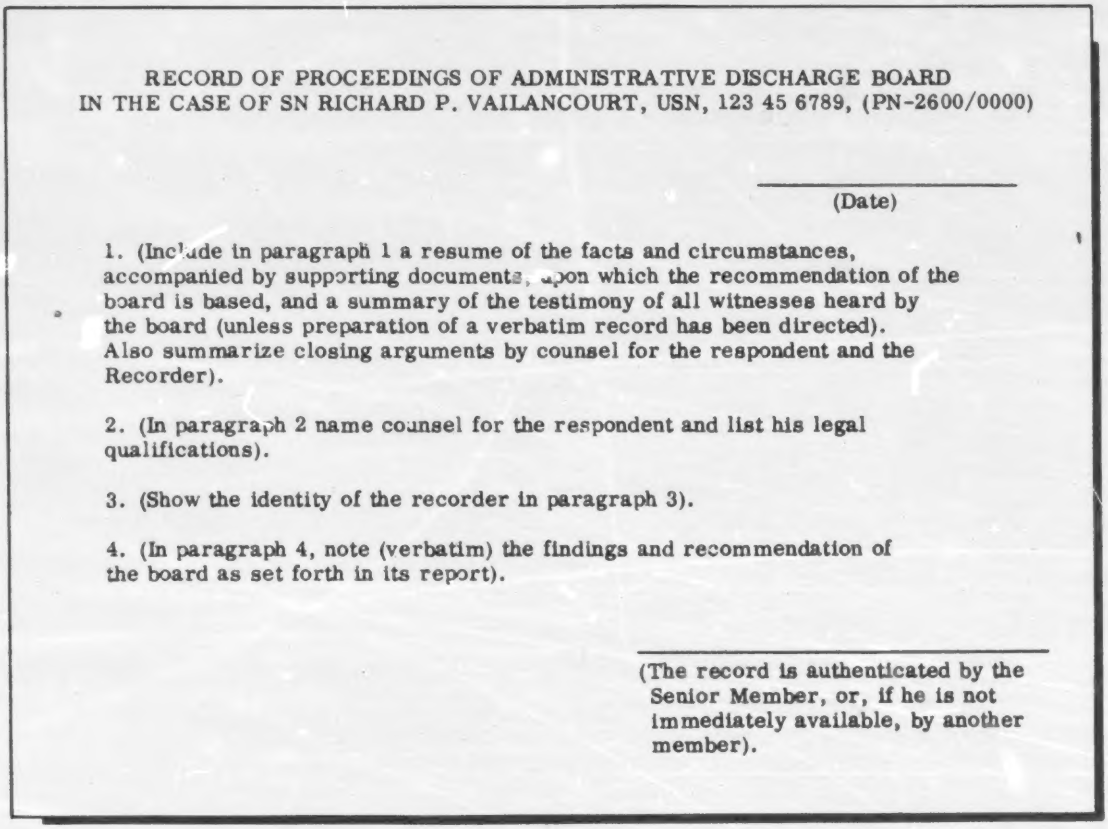
________________________
(Signature of Respondent, Date signed)

Witnessed:

________________________
(Signature, rank/rate, and title of counsel and date signed. List state wherein licensed)

192.83

**Figure 11-5.–Statement of Awareness and Request for or Waiver of Privileges (Processing for UNFITNESS and MISCONDUCT).**



RECORD OF PROCEEDINGS OF ADMINISTRATIVE DISCHARGE BOARD
IN THE CASE OF SN RICHARD P. VAILANCOURT, USN, 123 45 6789, (PN-2600/0000)

(Date)

1. (Include in paragraph 1 a resume of the facts and circumstances, accompanied by supporting documents, upon which the recommendation of the board is based, and a summary of the testimony of all witnesses heard by the board (unless preparation of a verbatim record has been directed). Also summarize closing arguments by counsel for the respondent and the Recorder).

2. (In paragraph 2 name counsel for the respondent and list his legal qualifications).

3. (Show the identity of the recorder in paragraph 3).

4. (In paragraph 4, note (verbatim) the findings and recommendation of the board as set forth in its report).

(The record is authenticated by the Senior Member, or, if he is not immediately available, by another member).

192.84

**Figure 11-6.—Content of Record of Administrative Discharge Board.**

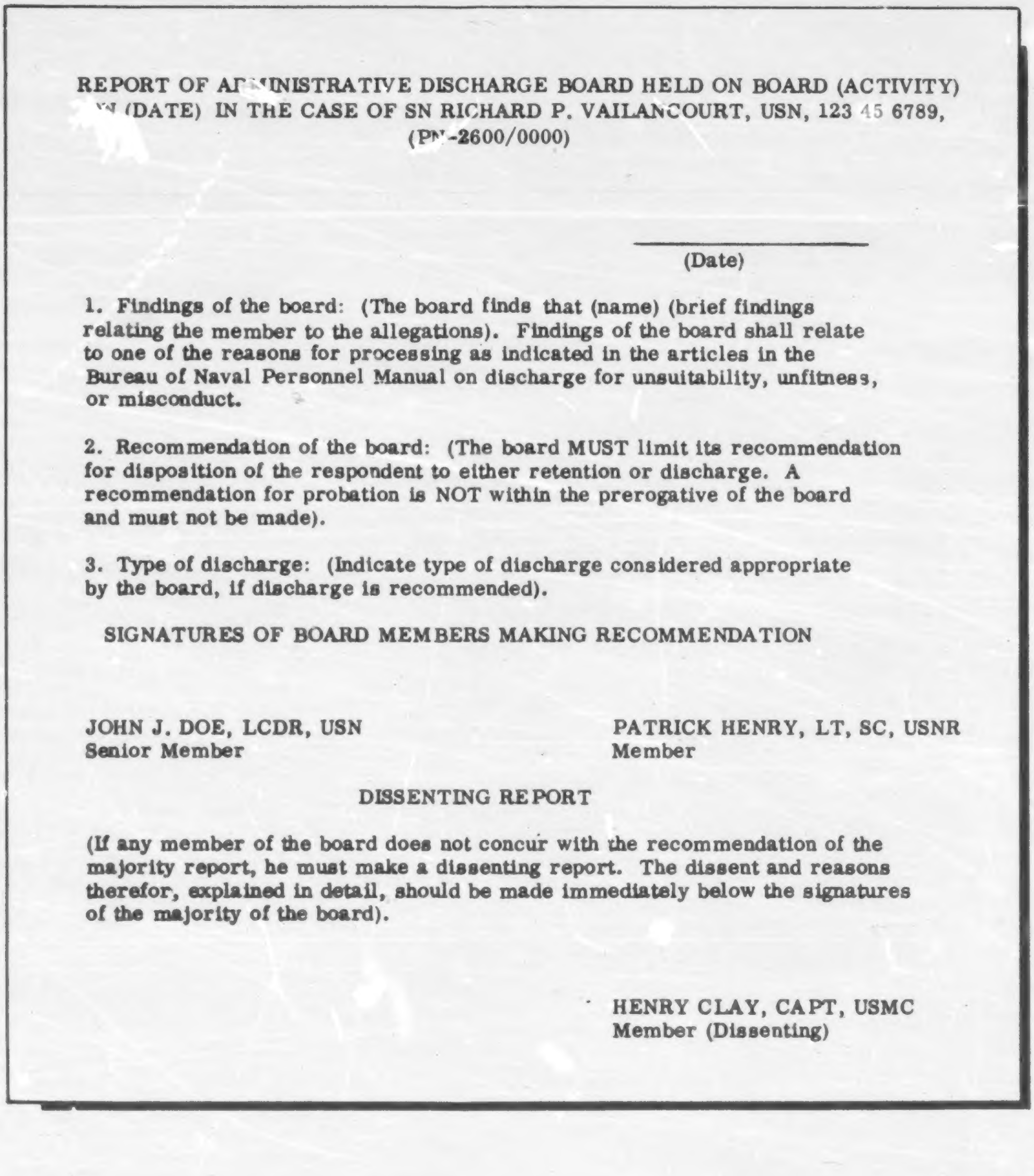
but not an undesirable discharge. There is a way he may be able to get his wish and avoid the undesirable discharge, too.

Article 3420245 of the *Bureau of Naval Personnel Manual* sets forth procedures through which Seaman Doe may request an administrative discharge board and then enter into an agreement with his commanding officer to waive his right to have his case heard by a board of officers in return for the commanding officer's agreement to a general discharge. If the commanding officer enters into such an agreement, he actually commits the Chief of Naval Personnel to authorize no less favorable action than a general discharge. Seaman Doe's counsel should ensure that he is fully aware of all his rights and all the procedures, including this one, available to him. In this case Seaman Doe, assisted by his counsel, must initiate the action to enter into the agreement with his commanding officer. Under no circumstances is the commanding officer authorized to initiate the action.

The prerequisites for entering into an agreement are:

(1) The member must be undergoing processing for either unfitness or misconduct, (2) he must have been assigned counsel (qualified in the sense of Article 27b), (3) he must have indicated his desire to have his case heard by a board of officers, and (4) he must initiate the agreement.

262



REPORT OF ADMINISTRATIVE DISCHARGE BOARD HELD ON BOARD (ACTIVITY) ON (DATE) IN THE CASE OF SN RICHARD P. VAILANCOURT, USN, 123 45 6789, (PN-2600/0000)

(Date)

1. Findings of the board: (The board finds that (name) (brief findings relating the member to the allegations). Findings of the board shall relate to one of the reasons for processing as indicated in the articles in the Bureau of Naval Personnel Manual on discharge for unsuitability, unfitness, or misconduct.

2. Recommendation of the board: (The board MUST limit its recommendation for disposition of the respondent to either retention or discharge. A recommendation for probation is NOT within the prerogative of the board and must not be made).

3. Type of discharge: (Indicate type of discharge considered appropriate by the board, if discharge is recommended).

SIGNATURES OF BOARD MEMBERS MAKING RECOMMENDATION

| | |
|---|---|
| JOHN J. DOE, LCDR, USN<br>Senior Member | PATRICK HENRY, LT, SC, USNR<br>Member |

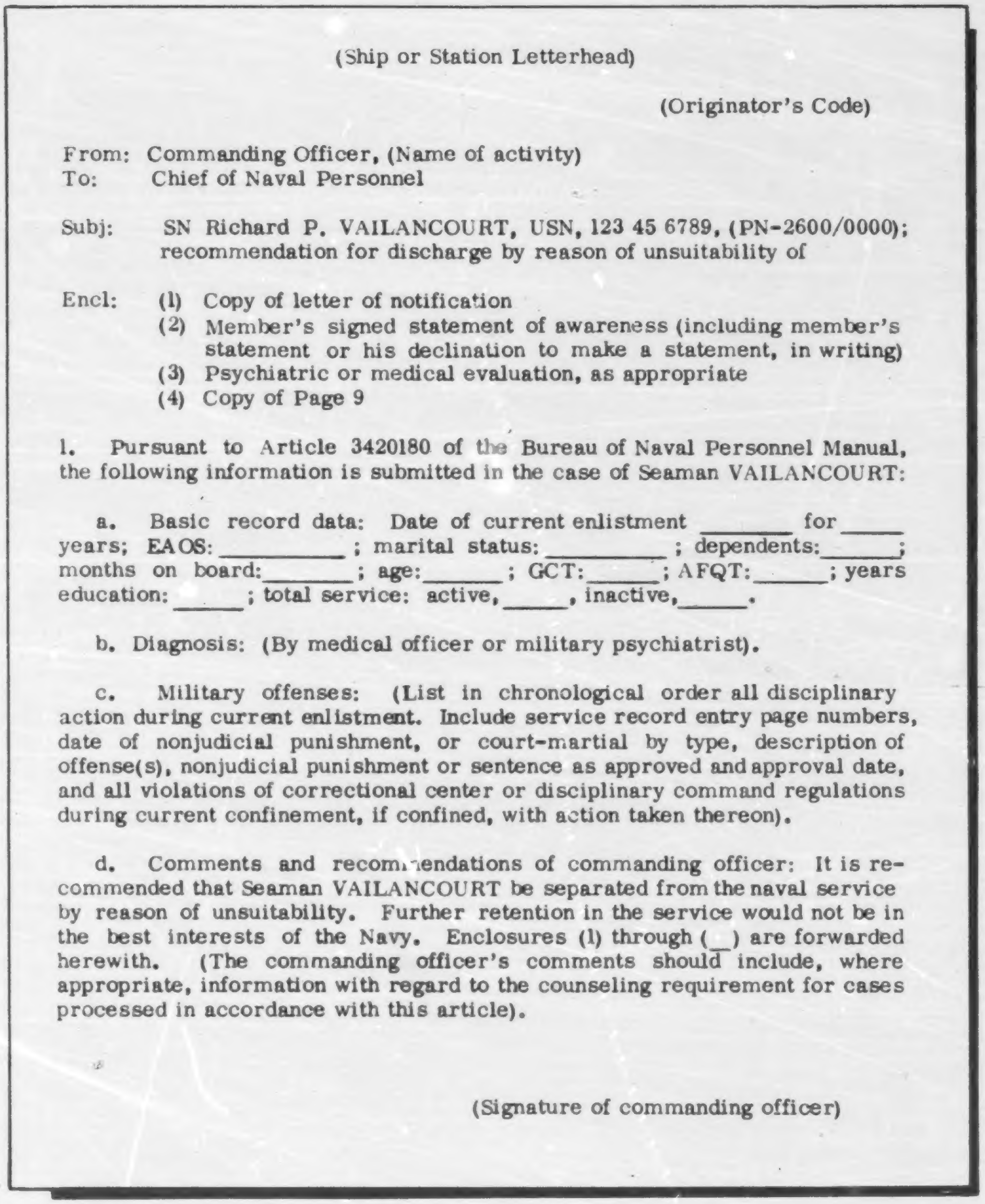
DISSENTING REPORT

(If any member of the board does not concur with the recommendation of the majority report, he must make a dissenting report. The dissent and reasons therefor, explained in detail, should be made immediately below the signatures of the majority of the board).

HENRY CLAY, CAPT, USMC
Member (Dissenting)

192.85

Figure 11-7.—Report of Administrative Discharge Board.



(Ship or Station Letterhead)

(Originator's Code)

From: Commanding Officer, (Name of activity)
To: Chief of Naval Personnel

Subj: SN Richard P. VAILANCOURT, USN, 123 45 6789, (PN-2600/0000); recommendation for discharge by reason of unsuitability of

Encl:
(1) Copy of letter of notification
(2) Member's signed statement of awareness (including member's statement or his declination to make a statement, in writing)
(3) Psychiatric or medical evaluation, as appropriate
(4) Copy of Page 9

1. Pursuant to Article 3420180 of the Bureau of Naval Personnel Manual, the following information is submitted in the case of Seaman VAILANCOURT:

a. Basic record data: Date of current enlistment _______ for _____ years; EAOS: __________ ; marital status: _________ ; dependents:______; months on board:_______; age:______; GCT:______; AFQT:______; years education:_____; total service: active,_____, inactive,_____.

b. Diagnosis: (By medical officer or military psychiatrist).

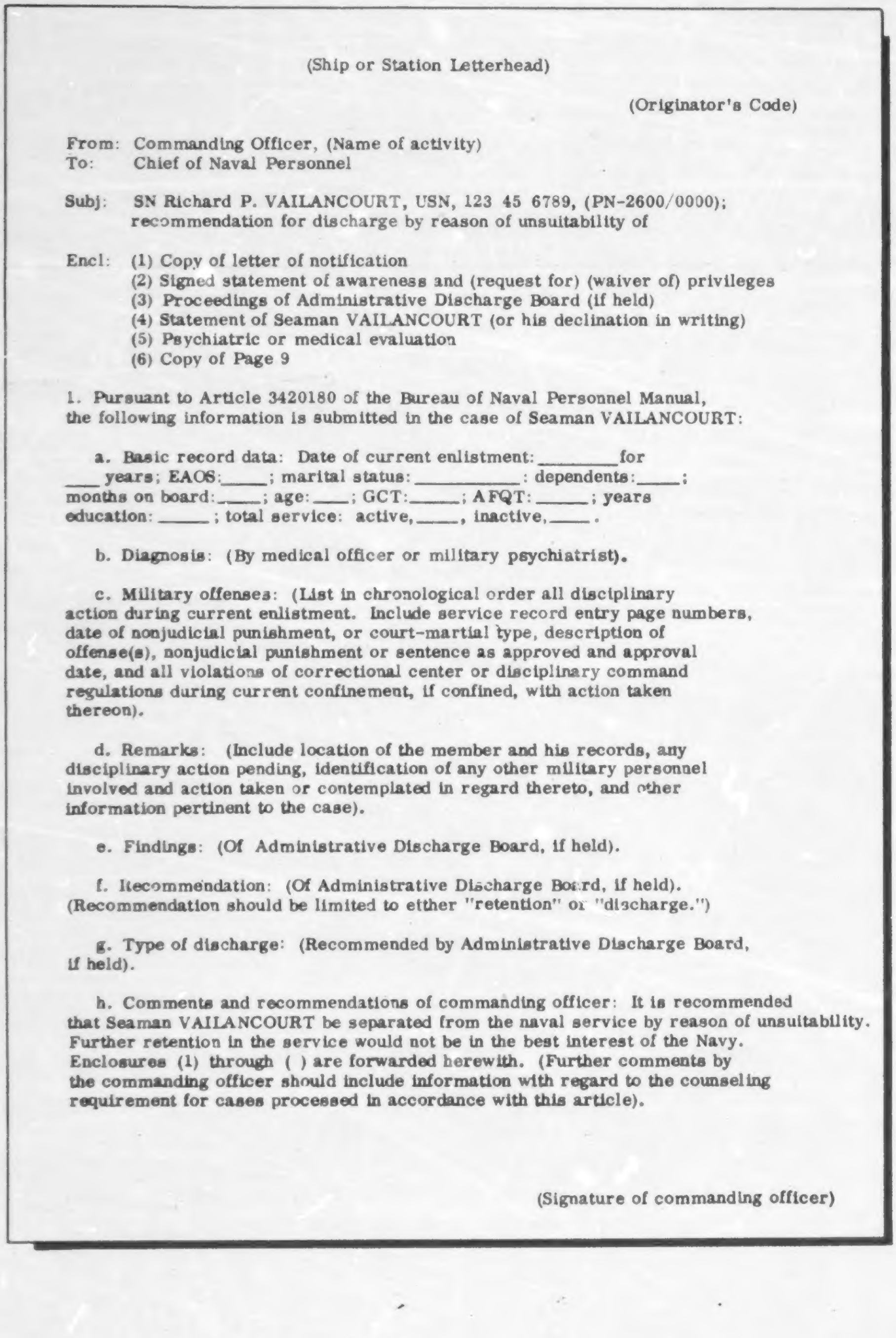
c. Military offenses: (List in chronological order all disciplinary action during current enlistment. Include service record entry page numbers, date of nonjudicial punishment, or court-martial by type, description of offense(s), nonjudicial punishment or sentence as approved and approval date, and all violations of correctional center or disciplinary command regulations during current confinement, if confined, with action taken thereon).

d. Comments and recommendations of commanding officer: It is recommended that Seaman VAILANCOURT be separated from the naval service by reason of unsuitability. Further retention in the service would not be in the best interests of the Navy. Enclosures (1) through (__) are forwarded herewith. (The commanding officer's comments should include, where appropriate, information with regard to the counseling requirement for cases processed in accordance with this article).

(Signature of commanding officer)

192.86

Figure 11-8.—Letter of Transmittal (Processing for UNSUITABILITY with less than eight years service).



(Ship or Station Letterhead)

(Originator's Code)

From: Commanding Officer, (Name of activity)
To: Chief of Naval Personnel

Subj: SN Richard P. VAILANCOURT, USN, 123 45 6789, (PN-2600/0000); recommendation for discharge by reason of unsuitability of

Encl:
(1) Copy of letter of notification
(2) Signed statement of awareness and (request for) (waiver of) privileges
(3) Proceedings of Administrative Discharge Board (if held)
(4) Statement of Seaman VAILANCOURT (or his declination in writing)
(5) Psychiatric or medical evaluation
(6) Copy of Page 9

1. Pursuant to Article 3420180 of the Bureau of Naval Personnel Manual, the following information is submitted in the case of Seaman VAILANCOURT:

a. Basic record data: Date of current enlistment: ________for ___ years; EAOS:____; marital status:__________: dependents:____; months on board:____; age:___; GCT:_____; AFQT:_____; years education:_____; total service: active,____, inactive,____.

b. Diagnosis: (By medical officer or military psychiatrist).

c. Military offenses: (List in chronological order all disciplinary action during current enlistment. Include service record entry page numbers, date of nonjudicial punishment, or court-martial type, description of offense(s), nonjudicial punishment or sentence as approved and approval date, and all violations of correctional center or disciplinary command regulations during current confinement, if confined, with action taken thereon).

d. Remarks: (Include location of the member and his records, any disciplinary action pending, identification of any other military personnel involved and action taken or contemplated in regard thereto, and other information pertinent to the case).

e. Findings: (Of Administrative Discharge Board, if held).

f. Recommendation: (Of Administrative Discharge Board, if held). (Recommendation should be limited to either "retention" or "discharge.")

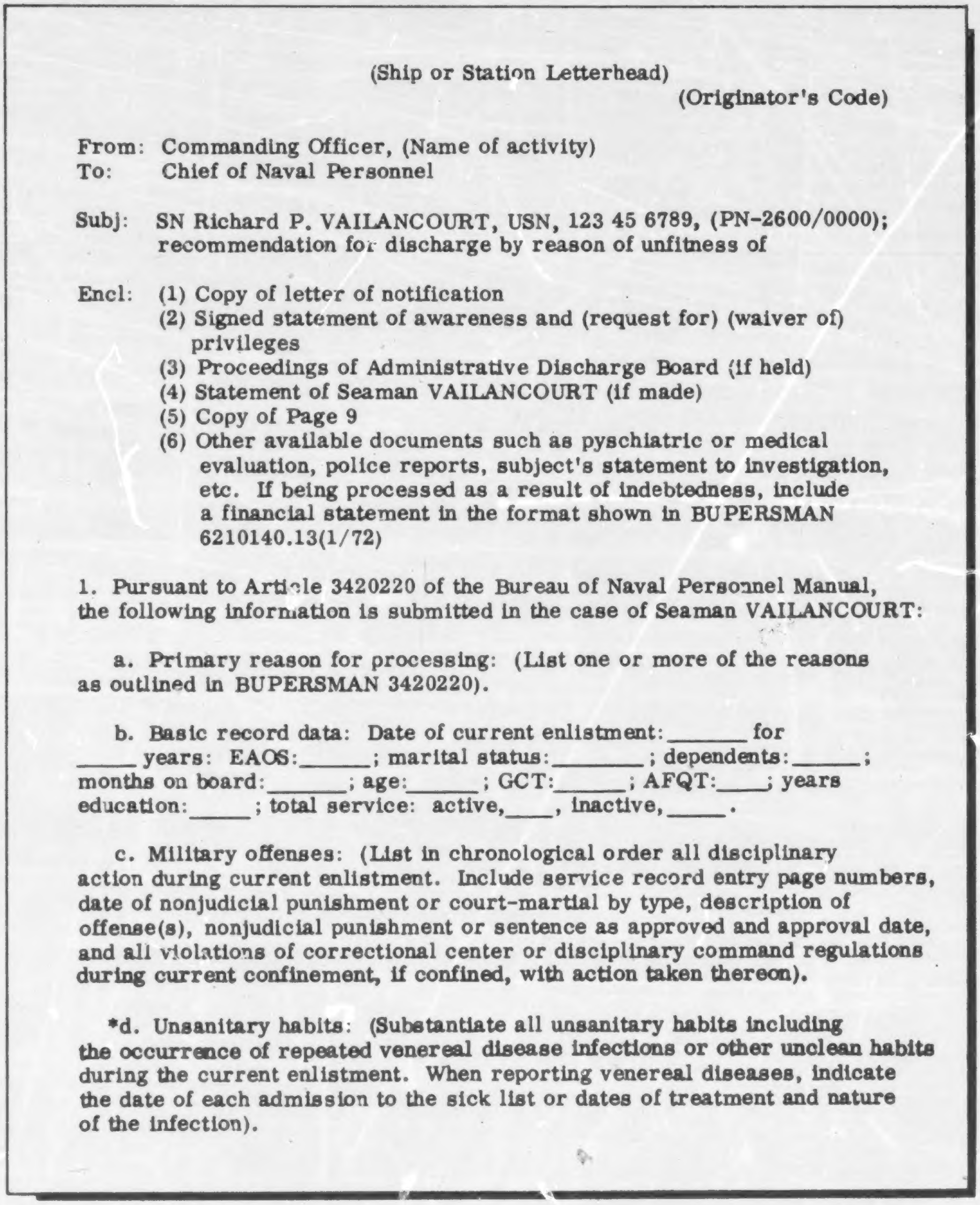
g. Type of discharge: (Recommended by Administrative Discharge Board, if held).

h. Comments and recommendations of commanding officer: It is recommended that Seaman VAILANCOURT be separated from the naval service by reason of unsuitability. Further retention in the service would not be in the best interest of the Navy. Enclosures (1) through ( ) are forwarded herewith. (Further comments by the commanding officer should include information with regard to the counseling requirement for cases processed in accordance with this article).

(Signature of commanding officer)

192.87

**Figure 11-9.—Letter of Transmittal (Processing for UNSUITABILITY with eight or more years service).**



(Ship or Station Letterhead)

(Originator's Code)

From: Commanding Officer, (Name of activity)
To: Chief of Naval Personnel

Subj: SN Richard P. VAILANCOURT, USN, 123 45 6789, (PN-2600/0000); recommendation for discharge by reason of unfitness of

Encl: (1) Copy of letter of notification
(2) Signed statement of awareness and (request for) (waiver of) privileges
(3) Proceedings of Administrative Discharge Board (if held)
(4) Statement of Seaman VAILANCOURT (if made)
(5) Copy of Page 9
(6) Other available documents such as pyschiatric or medical evaluation, police reports, subject's statement to investigation, etc. If being processed as a result of indebtedness, include a financial statement in the format shown in BUPERSMAN 6210140.13(1/72)

1. Pursuant to Article 3420220 of the Bureau of Naval Personnel Manual, the following information is submitted in the case of Seaman VAILANCOURT:

a. Primary reason for processing: (List one or more of the reasons as outlined in BUPERSMAN 3420220).

b. Basic record data: Date of current enlistment:_______ for _____ years: EAOS:______; marital status:________; dependents:______; months on board:_______; age:______; GCT:______; AFQT:____; years education:_____; total service: active,____, inactive,_____.

c. Military offenses: (List in chronological order all disciplinary action during current enlistment. Include service record entry page numbers, date of nonjudicial punishment or court-martial by type, description of offense(s), nonjudicial punishment or sentence as approved and approval date, and all violations of correctional center or disciplinary command regulations during current confinement, if confined, with action taken thereon).

*d. Unsanitary habits: (Substantiate all unsanitary habits including the occurrence of repeated venereal disease infections or other unclean habits during the current enlistment. When reporting venereal diseases, indicate the date of each admission to the sick list or dates of treatment and nature of the infection).

192.88.1

Figure 11-10.—Letter of transmittal (Processing for UNFITNESS).

(Originator's Code)

e. Other involvements: (Civil convictions, if any, on the basis of information contained in the service record or otherwise readily available. List date and court in which convicted,offense, and sentence awarded).

f. Remarks: (Include location of the member and his record, any disciplinary action pending, identification of any other military personnel involved and action taken or contemplated in regard thereto, and other information pertinent to the case).

g. Findings: (Of Administrative Discharge Board, if held).

h. Recommendation: (Of Administrative Discharge Board, if held).

i. Type of discharge: (Recommended by Administrative Discharge Board, if held).

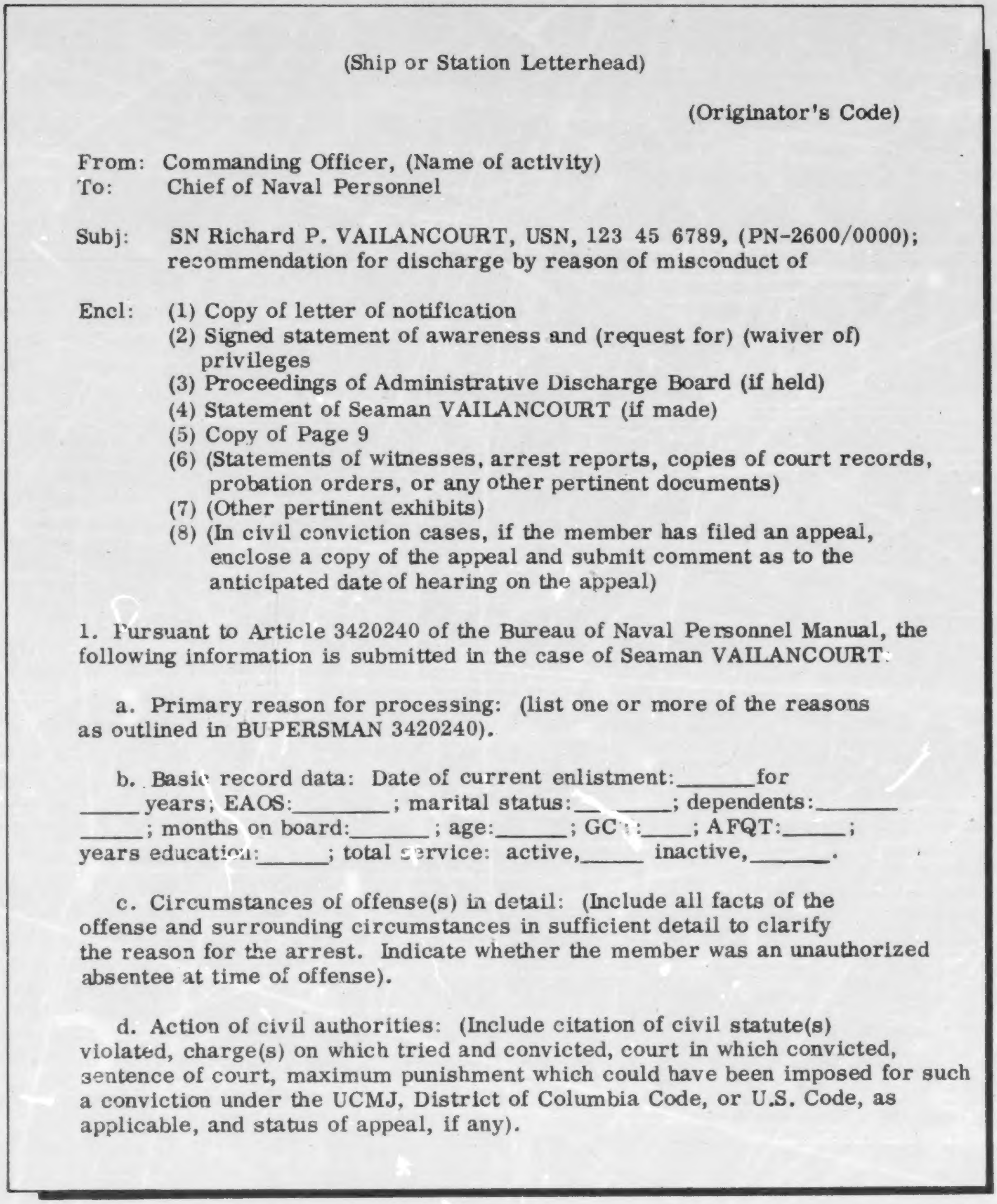
j. Comments and recommendations of commanding officer: (Enclosures (1) through (_) are forwarded herewith. Further comments of the commanding officer should include information, where appropriate, with regard to the counseling requirement for cases processed by reason of frequent involvement of a discreditable nature with civil or military authorities, an established pattern for shirking, an established pattern showing dishonorable failure to pay debts, and dishonorable failure to support dependents. If discharge is recommended, the commanding officer must make a specific recommendation as to the type and reason for discharge; e.g., general/undesirable by reason of unfitness).

(Signature of commanding officer)

*This item not required except in cases for which unsanitary habits is the primary reason for processing.

192.88.2

**Figure 11-10.—Letter of Transmittal (Processing for UNFITNESS)—(Continued).**



(Ship or Station Letterhead)

(Originator's Code)

From: Commanding Officer, (Name of activity)
To: Chief of Naval Personnel

Subj: SN Richard P. VAILANCOURT, USN, 123 45 6789, (PN-2600/0000); recommendation for discharge by reason of misconduct of

Encl: (1) Copy of letter of notification
(2) Signed statement of awareness and (request for) (waiver of) privileges
(3) Proceedings of Administrative Discharge Board (if held)
(4) Statement of Seaman VAILANCOURT (if made)
(5) Copy of Page 9
(6) (Statements of witnesses, arrest reports, copies of court records, probation orders, or any other pertinent documents)
(7) (Other pertinent exhibits)
(8) (In civil conviction cases, if the member has filed an appeal, enclose a copy of the appeal and submit comment as to the anticipated date of hearing on the appeal)

1. Pursuant to Article 3420240 of the Bureau of Naval Personnel Manual, the following information is submitted in the case of Seaman VAILANCOURT:

a. Primary reason for processing: (list one or more of the reasons as outlined in BUPERSMAN 3420240).

b. Basic record data: Date of current enlistment:______for _____ years; EAOS:________; marital status:__ _____; dependents:_______ _____; months on board:_______; age:______; GCT:____; AFQT:______; years education:______; total service: active,_____ inactive,_______.

c. Circumstances of offense(s) in detail: (Include all facts of the offense and surrounding circumstances in sufficient detail to clarify the reason for the arrest. Indicate whether the member was an unauthorized absentee at time of offense).

d. Action of civil authorities: (Include citation of civil statute(s) violated, charge(s) on which tried and convicted, court in which convicted, sentence of court, maximum punishment which could have been imposed for such a conviction under the UCMJ, District of Columbia Code, or U.S. Code, as applicable, and status of appeal, if any).

192.89.1

Figure 11-11.—Letter of Transmittal (Processing for MISCONDUCT).

(Originator's Code)

e. Summary of military offenses: (List in chronological order all disciplinary action during current enlistment. Include service record entry page numbers, date of nonjudicial punishment or court-martial by type, description of offenses, nonjudicial punishment or sentence as approved and date of approval and all violations of correctional center or disciplinary command regulations during current confinement, if confined, with action taken thereon).

f. Remarks: (Include location of the member and his records, any unauthorized absence involved, and disciplinary action taken or pending, identification of any other military personnel involved in the case and action taken or contemplated in regard thereto, and other information pertinent to the case).

g. Findings: (Of Administrative Discharge Board, if held).

h. Recommendation: (Of Administartive Discharge Board, if held). (Recommendation should be limited to indicate either retention or discharge).

i. Type of discharge: (Recommended by Administrative Discharge Board, if held).

j. Comments and recommendations of commanding officer: (Enclosures (1) through (_) are forwarded herewith. If discharge is recommended, the commanding officer must make a specific recommendation as to the type and reason for discharge; e.g., general/undesirable by reason of misconduct).

(Signature of commanding officer)

192.89.2

**Figure 11-11.—Letter of Transmittal (Processing for MISCONDUCT)—(Continued)**

When the prerequisites are met the member, assisted by his counsel, submits the request to enter into an agreement to waive the discharge board in return for the assurance of a discharge under honorable conditions.

The agreement must be in writing and must be personally signed by the member and his counsel, as witness on behalf of the member, and must be approved by the commanding officer. Figure 11-13 is an example of such an agreement.

In Seaman Doe's case let's assume that an agreement is entered into and approved by the commanding officer. What is your next step in the processing? You continue the processing as if the member had waived the discharge board at the outset of the case. Of course, the original of the agreement entered into must be forwarded to the Chief of Naval Personnel as an enclosure

# FEDERAL BENEFITS BASED

## BENEFITS

The purpose of this chart is to show the effect of the type of discharge upon possible eligibility to various rights and benefits.
No attempt is made to set forth other requirements of eligibility which must be met.

Prepared by ALL HANDS Magazine

| BENEFITS | APPLICABLE STATUTE OR REGULATION | PUNITIVE UCMJ | | | | | |
|---|---|---|---|---|---|---|---|
| | | DISHONORABLE DD Form 260H | BAD CONDUCT DD Form 259H (Conditions Other Than Honorable) | | UNDESIRABLE DD Form 258H (Conditions Other Than Honorable) | | |
| | | GENERAL COURT MARTIAL CONVICTION | GENERAL COURT MARTIAL CONVICTION | SPECIAL COURT MARTIAL CONVICTION | MISCONDUCT 3420240 | UNFITNESS 3420220 | SECURITY 3420300 |
| **I. BENEFITS ADMINISTERED BY THE VETERANS ADMINISTRATION** | | | | | | | |
| 1 Wartime disability compensation | 38 USC 310 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 2 Wartime death compensation | 38 USC 321 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 3 Peacetime disability compensation | 38 UCS 331 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 4 Peacetime death compensation | 38 USC 341 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 5 Dependency and indemnity compensation to survivors | 38 USC 410, 416 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 6 Educational assistance | 38 USC, Chapter 34 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 7 Pensions to widows and children | 38 USC 521-544 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 8 Hospital, domiciliary and nursing home care | 38 USC 610 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 9 Outpatient medical and dental care | 38 USC 612 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 10 Drug Dependency Treatment (hosp. and necessary followup care) | 38 USC 610, 612 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 11 Prosthetic appliances | 38 USC 613 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 12 Seeing-eye dogs, mechanical and electronic aids | 38 USC 614 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 13 Burial benefits (flag and expenses) | 38 USC 901, 902 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 14 Special housing | 38 USC 801 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 15 Vocational rehabilitation | 38 USC, Chapter 31 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 16 Orphans' and widows' educational assistance | 38 USC, Chapter 35 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 17 Home and farm loans, business loans* | 38 USC 1801 et seq. | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 18 Autos for disabled veterans | 38 USC 1901-1903 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 19 Clothing allowance (prosthetic users) | 38 USC 362 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| **II. BENEFITS ADMINISTERED BY THE MILITARY DEPARTMENTS** | | | | | | | |
| 1 Mileage | Joint Trav. Reg. ¶ M4157 | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |
| 2 Headstone marker (Sec. Army administers) | 24 USC 279a et seq. AR 290-5, ¶ 33 | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |
| 3 Payment for accrued leave | 37 USC 501 | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |
| 4 Transportation for dependents and household goods | Joint Trav. Reg. ¶ M7009, M8259 | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |
| 5 Burial in national cemetery (Sec. Army administers) | 24 USC 281; AR 290-5, ¶ 20 | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |
| 6 Return and wear uniform home | 10 USC 771a | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |
| 7 Award of medals, crosses and bars | 10 USC, Chapter 357 | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |
| 8 Admission to the Naval Home | BuPers Man 6210280 | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |
| 9 Travel in kind | Joint Trav. Reg. ¶ M5300 et seq., M4130 | ● | ● | ● | ● | ● | ● |
| 10 Cash allowance ($25) | 10 USC 771a | ● | ● | ● | ● | ● | ● |
| 11 Suit of civilian clothes (not to exceed $30) | 10 USC 771a | ● | ● | ● | ● | ● | ● |
| 12 Board for Correction of Naval Records | 10 USC 1552 | ● | ● | ● | ● | ● | ● |
| 13 Death gratuity | 10 USC 1480 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 14 Navy Discharge Review Board | 10 USC 1553 | ▒ | ▒ | ● | ● | ● | ● |
| 15 Use of wartime title and wearing of uniform | 10 USC 772b | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |
| **III. BENEFITS ADMINISTERED BY OTHER FEDERAL AGENCIES** | | | | | | | |
| 1 Civil Service employment preference (Civ. Ser. Com.) | 5 USC 2108 | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |
| 2 Credit for retirement benefits (Civ. Ser. Com.) | 5 USC 8331 et seq. | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |
| 3 Reemployment benefits (Sec. Labor) | 50 APP. USC 459 | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |
| 4 Naturalization benefits (Immigr. & Natl. Services) | 8 USC 1440 | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |
| 5 Employment as District Court bailiffs | 28 USC 755 | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |
| 6 D. C. police, firemen, and teacher retirement credit | D. C. Code Tit 4, 523,<br>Tit 31, 739 | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |
| 7 Housing for distressed families of veterans (HUD) | 42 USC 1571 et seq. | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 8 Preference in purchasing defense housing (HUD) | 42 USC 1592a and 1592n(b) | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 9 Preference for farm loans (Sec. Agric.) | available under various statutes. Basic statute is 7 USC 1983a | ▒ | ● | ● | ● | ● | ● |
| 10 Preference for farm housing loans (Sec. Agric.) | 42 USC 1477 | ▒ | ● | ● | ● | ● | ● |
| 11 Unemployment benefits | 38 USC 2001 et seq. | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 12 Social Security wage credits for WW II service (Sec. HEW) | 42 USC 417 | ▒ | ▒ | ▨ | ▨ | ▨ | ▨ |
| 13 Employment preference in Farm Credit Banks | 12 USC 649 1 | ▒ | ▒ | ▒ | ▒ | ▒ | ▒ |

*Business loans are available only to veterans of World War II and Korea

# UPON TYPE OF DISCHARGE

**TYPE OF DISCHARGE**

**ADMINISTRATIVE**

| GENERAL DD Form 257N (Under Honorable Conditions) | | | | HONORABLE DD Form 256N (Benefits listed may also be applicable to personnel receiving General Discharges for these reasons) | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| MISCONDUCT 3620240 | UNFITNESS 3620270 | SECURITY 3620200 | UNSUITABILITY 3630180 APPLICABLE TO HONORABLE DISCHARGES IN THIS CATEGORY ALSO | MINORITY 3850260 | DEPENDENCY OR HARDSHIP 3830240 | CONVENIENCE OF THE GOVERNMENT 3850220 | DISABILITY 3850280 | FULFILLMENT OF SERVICE OBLIGATION 3810400 | EXPIRATION OF ENLISTMENT 3840260 | |
| | | | | | | | | | | **I. BENEFITS ADMINISTERED BY THE VETERANS ADMINISTRATION** |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 1 Wartime disability compensation |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 2 Wartime death compensation |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 3 Peacetime disability compensation |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 4 Peacetime death compensation |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 5 Dependency and indemnity compensation to survivors |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 6 Educational assistance |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 7 Pensions to widows and children |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 8 Hospital, domiciliary and nursing home care |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 9 Outpatient medical and dental care |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 10 Drug Dependency Treatment (hosp. and necessary followup care) |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 11 Prosthetic appliances |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 12 Seeing-eye dogs, mechanical and electronic aids |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 13 Burial benefits (flag and expenses) |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 14 Special housing |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 15 Vocational rehabilitation |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 16 Orphans' and widows' educational assistance |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 17 Home and farm loans; business loans* |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 18 Autos for disabled veterans |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 19 Clothing allowance (prosthetic users) |
| | | | | | | | | | | **II. BENEFITS ADMINISTERED BY THE MILITARY DEPARTMENTS** |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 1 Mileage |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 2 Headstone marker (Sec. Army administers) |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 3 Payment for accrued leave |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 4 Transportation for dependents and household goods |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 5 Burial in national cemetery (Sec. Army administers) |
| ░ | ░ | ░ | ░ | ● | ● | ● | ● | ● | ● | 6 Retain and wear uniform home |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 7 Award of medals, crosses and bars |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 8 Admission to the Naval Home |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 9 Travel in kind |
| ░ | ░ | ░ | ░ | NA | N/A | N/A | N/A | N/A | N/A | 10 Cash allowance ($25) |
| ● | ● | ● | ● | N/A | N/A | N/A | N/A | N/A | N/A | 11 Suit of civilian clothes (not to exceed $30) |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 12 Board for Correction of Naval Records |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 13 Death gratuity |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 14. Navy Discharge Review Board |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 15 Use of wartime title and wearing of uniform |
| | | | | | | | | | | **III. BENEFITS ADMINISTERED BY OTHER FEDERAL AGENCIES** |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 1 Civil Service employment preference (Civ. Ser. Com.) |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 2 Credit for retirement benefits (Civ. Ser. Com.) |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 3 Reemployment benefits (Sec. Labor) |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 4 Naturalization benefits (Immigr. & Nat'l. Services) |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 5 Employment as District Court bailiffs |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 6 D. C. police, fireman, and teacher retirement credit |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 7 Housing for distressed families of veterans (HUD) |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 8 Preference in purchasing defense housing (HUD) |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 9 Preference for farm loans (Sec. Agric.) |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 10 Preference for farm housing loans (Sec. Agric.) |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 11 Unemployment benefits |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 12 Social Security wage credits for WW II service (Sec. HEW) |
| ● | ● | ● | ● | ● | ● | ● | ● | ● | ● | 13 Employment preference in Farm Credit Banks |

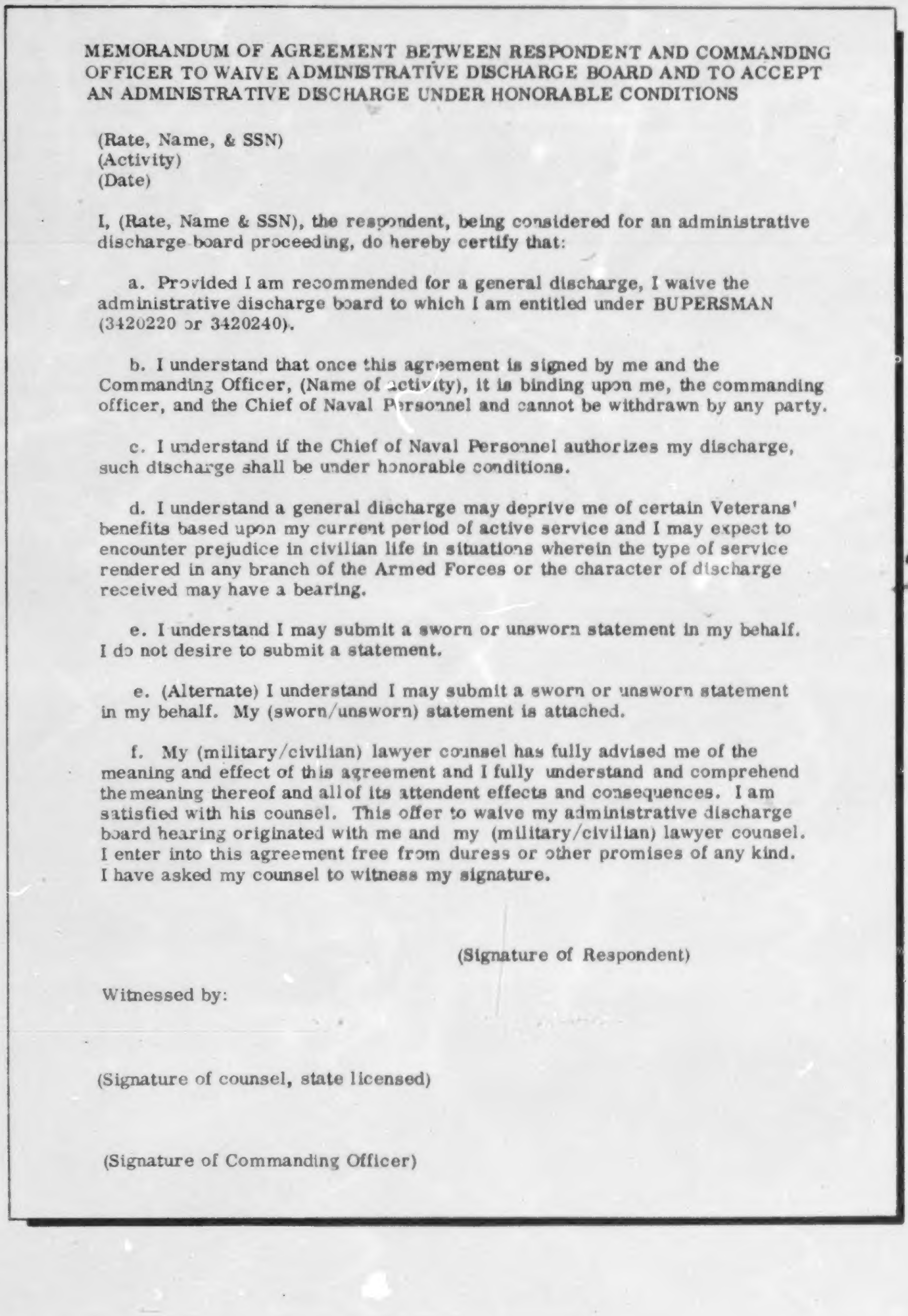
**KEY**

| | |
|---|---|
| ● | ELIGIBLE |
| ░ | NOT ELIGIBLE |
| N/A | NOT APPLICABLE AS PERSON IS ENTITLED TO BENEFITS LISTED ELSEWHERE |
| ▨ | ELIGIBLE ONLY IF ADMINISTERING AGENCY DETERMINES THAT FOR ITS PURPOSES THE DISCHARGE WAS NOT UNDER DISHONORABLE CONDITIONS |

AUGUST 1973

192.90

Figure 11-12.–Federal Benefits Based Upon Type of Discharge.



MEMORANDUM OF AGREEMENT BETWEEN RESPONDENT AND COMMANDING OFFICER TO WAIVE ADMINISTRATIVE DISCHARGE BOARD AND TO ACCEPT AN ADMINISTRATIVE DISCHARGE UNDER HONORABLE CONDITIONS

(Rate, Name, & SSN)
(Activity)
(Date)

I, (Rate, Name & SSN), the respondent, being considered for an administrative discharge board proceeding, do hereby certify that:

a. Provided I am recommended for a general discharge, I waive the administrative discharge board to which I am entitled under BUPERSMAN (3420220 or 3420240).

b. I understand that once this agreement is signed by me and the Commanding Officer, (Name of activity), it is binding upon me, the commanding officer, and the Chief of Naval Personnel and cannot be withdrawn by any party.

c. I understand if the Chief of Naval Personnel authorizes my discharge, such discharge shall be under honorable conditions.

d. I understand a general discharge may deprive me of certain Veterans' benefits based upon my current period of active service and I may expect to encounter prejudice in civilian life in situations wherein the type of service rendered in any branch of the Armed Forces or the character of discharge received may have a bearing.

e. I understand I may submit a sworn or unsworn statement in my behalf. I do not desire to submit a statement.

e. (Alternate) I understand I may submit a sworn or unsworn statement in my behalf. My (sworn/unsworn) statement is attached.

f. My (military/civilian) lawyer counsel has fully advised me of the meaning and effect of this agreement and I fully understand and comprehend the meaning thereof and all of its attendent effects and consequences. I am satisfied with his counsel. This offer to waive my administrative discharge board hearing originated with me and my (military/civilian) lawyer counsel. I enter into this agreement free from duress or other promises of any kind. I have asked my counsel to witness my signature.

(Signature of Respondent)

Witnessed by:

(Signature of counsel, state licensed)

(Signature of Commanding Officer)

192.91

Figure 11-13.—Agreement to Waive Discharge Board to Preclude UNDESIREABLE discharge (Processing for UNFITNESS or MISCONDUCT).

to the letter of transmittal (see figures 11-10 and 11-11 for samples of letters of transmittal).

## PROCESSING FOR SECURITY REASONS

Enlisted personnel may be separated by reason of security with an honorable, general, or undesirable discharge in accordance with the procedures and provisions outlined in SECNAVINST 5521.6 series which concerns the administration of the military personnel security program.

## NOTIFICATION OF NEXT OF KIN

Normally, when an enlisted member is to be involuntarily separated from the Navy, as may be the case for those members processed as a result of unsuitability, unfitness, or misconduct, the commanding officer must see that the member is counseled to notify his parents, wife, or guardian, as appropriate, of his pending discharge and the attendant circumstances. This notification should be made as soon as practicable after it becomes apparent that administrative processing will be undertaken.

If the member does not wish to notify his next of kin, he must be requested to authorize the commanding officer to make the notification. If the member is 21 years of age or older and refuses to notify his next of kin or to authorize the commanding officer to make the notification, no further action need be taken except to have the fact of the member's refusal recorded on Page 13 of the member's service record along with the name of the officer who received the refusal.

If the member is under 21 years of age and refuses to notify his next of kin or to authorize the commanding officer to do so, the commanding officer must notify the next of kin of the scheduled date and place where the separation is to be effected. He should also notify the next of kin of the details concerning the discharge unless there is some compelling reason not to disclose this information. Notification normally is made by letter. However, other means such as a telephone call or personal visit may be used if the member's next of kin is nearby or where otherwise appropriate. The person(s) notified and the means of notification should be recorded and retained in the command files, as there is no requirement that this information be placed in the member's service record.

## WHERE TO FIND IT

The following references are given to aid you in locating regulations and information required in the processing of administrative discharge cases. These references should be checked periodically to ensure that you are using the latest information available and that all requirements contained in them are being met.

| Reference | Pertains to |
|---|---|
| BUPERS Manual, | |
| Article 3840080 | Policy concerning separation of enlisted personnel |
| Article 3420250 | Administrative discharge boards |
| Article 3420180 | Processing for unsuitability |
| Article 3420220 | Processing for unfitness |
| Article 3420240 | Processing for misconduct |
| Article 3420245 | Agreement to waive board to preclude undesirable discharge |
| Article 6210140.13 | Financial statement in indebtedness cases |
| Article 1010150 | Types of discharges |
| Article 3420200 and SECNAVINST 5521.6 series | Discharge by reason of security |
| Article 3450100 | Notification of Next of Kin |
| SECNAVINST 6710.1 series and BUPERSNOTE 6710 series | Procedures in drug cases |

| Reference | Pertains to |
|---|---|
| **BUPERS Manual,** | |
| SECNAVINST 1900.9 series | Policy for separation of members involved in homosexuality |
| SECNAVINST 5430.14 series | Naval Investigative Jurisdiction (Investigation of drug cases) |
| Article 3810420 | Separation of aliens |
| Article 3810460 | Separation of physically disqualified naval reservists on inactive duty (enlisted) |
| Article 3840100 | General provisions and restrictions relating to enlisted personnel |
| Article 3840160 | Recoupment of reenlistment bonus |
| Article 3840180 | Time lost from active duty which must be made up |
| Article 3850120 | Determination of types of discharge for enlisted personnel |

| Reference | Pertains to |
|---|---|
| **BUPERS Manual,** | |
| Article 3840140 | Discharge certificates |
| Article 3850220 | Convenience of the government discharges |
| Article 5040200 | Naval Discharge Board and Board for Corrections of Naval Records |
| Article 3420255 | Actions by CHNAVPERS on administrative discharge proceedings |
| Article 3420270 | Administrative procedures for requesting discharge for the good of the service |
| BUPERSINST 1900.22 series | Project Expedite |

BUPERS Notices in the 1910 series are issued from time to time to promulgate additional information, errors noted, and so forth, in connection with administrative discharge processing.

## CHAPTER 12

# FACT-FINDING BODIES

Whenever a ship is involved in a collision, allision, or has an accident in which repairs are required; whenever an aircraft is involved in any accident; whenever there is a serious fire at any activity; whenever naval personnel are injured or die from an accident or under peculiar circumstances, the commanding officer must find out what happened, why it happened, how it happened, and to whom. If, as a result of his inquiry, anyone is found to be culpably negligent, disciplinary action should be taken.

### GENERAL CHARACTERISTICS

The commanding officer's method of finding out what happened is to appoint a fact-finding body composed of one or more officers (and in certain situations senior enlisted personnel or civilians) to investigate the incident for him.

### PURPOSE

The reporting of facts concerning any unusual incident is of importance to any personnel involved as well as in the administration of the Navy as a whole. In other words, the reporting of facts by fact-finding bodies is necessary in order that the Navy may be more efficiently managed. As an example, take the investigative report on an accident which discloses a material or equipment failure. The report is routed to the cognizant Command, which may find it helpful to issue new regulations or instructions to forestall another accident of the same type.

In another field, it is of utmost importance that all the facts upon which may depend future rights and benefits be gathered and preserved at the time a personal injury is incurred. It may then be necessary to determine and to make a matter of record whether misconduct or actions not in the line of duty are involved. Favorable findings will be of great weight in protecting rights and benefits of the servicemen involved.

An immediate advantage to the command convening the inquiry is that in limited cases the record of proceedings serves as a pretrial investigation, a required preliminary to general court-martial proceedings.

### TYPES

On the basis of membership, there are three types of fact-finding bodies: courts of inquiry, boards of investigation, and single individual investigations. Both boards of investigation and single individual investigations are divided into those which are formal and those which are informal, on the basis of procedure. The three types here discussed may be referred to as "*JAG Manual* investigations," because the controlling regulations are set forth in Chapters II through X of the *JAG Manual* (JAGINST 5800.7 series). The authority for courts of inquiry, however, is statutory, and is found in Article 135, UCMJ. At the same time the term "*JAG Manual* investigation" helps to distinguish these investigations from others controlled by different sets of regulations, e.g., OPNAVINST 3750.6 series concerning the investigation of Navy aircraft accidents for the purpose of accident prevention.

Courts of inquiry may be convened by any person authorized to convene a general court-martial or any other person designated by the Secretary of the Navy. With two exceptions, any officer in charge, commanding officer, or higher authority may order either of the other two types of investigations (formal or informal). Officers in charge are excluded if they are not authorized to impose nonjudicial punishment under Article 15 of the *UCMJ* (see *JAG Manual*, sections 0101a(2)(b) and 0206b). The other exception is that if the investigation involves redress of injuries to property under Article 139, UCMJ, the convening authority must be a commanding officer who is authorized to convene special courts-martial, or a superior authority.

A court of inquiry is the most formal fact-finding body, and except for the statutory board for redress of injury to property provided for in Article 139, UCMJ, is the only body which has the power to subpoena civilian witnesses. Testimony is always taken under oath and the proceedings are recorded verbatim. However, in the discretion of the court, arguments presented on behalf of the Government or any party to the inquiry may be summarized in the transcript. In addition, routine proceedings of the court may be described in the past tense as actions taken instead of present tense recording language actually used by the participants, with the exception of advice given concerning rights of parties or statements or actions of parties in connection with the exercise or waiver of these rights.

The main differences between a formal investigation and one which is informal is that, a formal investigation utilizes a formal hearing procedure, ordinarily takes all testimony under oath, ordinarily maintains a verbatim record of all evidence, and may be authorized to designate parties while an informal investigation normally employs the preliminary inquiry method of gathering evidence; i.e., telephone inquiries, correspondence, and informal interviews. In addition, parties *may not* be designated in an informal investigation.

## FUNCTION

A fact-finding body of whatever type has only one basic function: To find out and report impartially the facts concerning an incident. The investigation must be confined to the limits of the appointing order. All facts learned are reported to the officer who ordered the investigation (convening authority). The report of the investigation provides the basis for any future administrative action, but the investigation itself is not a trial, and opinions expressed are not legal judgments. Neither are recommendations made binding upon the convening or reviewing authorities.

## COMPOSITION

The composition of a fact-finding body depends in part upon the type of body convened and in part upon the nature of the inquiry.

A court of inquiry consists of at least three commissioned officers as members and a commissioned officer as counsel for the court. A formal investigation consists of one or more commissioned officers as member or members. An informal investigation may consist of one or more officers, senior enlisted persons, or civilian employees of the Department of the Navy as member or members. If more than one member it is called a board of investigation. For the formal and informal investigations counsel may be appointed if considered advisable. The assigned counsel for an investigative body should be an officer experienced in trial or investigative procedures, and preferably a lawyer.

Ordinarily no counsel will be appointed for an informal investigation.

If no counsel is assigned to a board of investigation, the junior member will act as counsel.

No member of a fact-finding body should be junior to an officer designated in the appointing order as a party to the inquiry.

## RULES OF ATTENDANCE

In courts of inquiry and formal investigations, attendance at the proceedings becomes the primary duty of all members. If a member is absent, perhaps because of illness, the proceedings may not continue unless so directed by the convening authority. When a member who has been absent returns, he must examine that part of any of the proceedings he missed.

The rules of attendance for informal investigations are not quite so rigid. In fact, in the case of an informal board of investigation (two or more members), the presence of all members is not necessary for the investigation to continue unless the convening authority so directs. This is exactly the opposite of the preceding paragraph. If testimony is taken during the absence of a member, his absence is simply noted in the transcript or summary of the witness' testimony. Sometimes a person is appointed a member only because he possesses useful technical knowledge. When this information is noted in the appointing order, it is understood that he need not participate in those parts of the investigation which do not concern his specialty.

A member's assignment to an investigation is his primary duty regardless of the type of investigation; whether it be a court of inquiry, a board of investigation, or a one-man investigation. A member may not absent himself simply for the performance of his usual duties without permission of the convening authority.

## APPOINTING ORDER

Courts of inquiry and formal investigations are convened by an appointing order signed by the convening authority. The order is in official letter form addressed to the president of the court of inquiry or senior member of the investigation. Article 135 of the UCMJ states that courts of inquiry shall make findings of fact, but shall *NOT* express opinions or make recommendations unless directed to do so by the convening authority. By extension, this rule also applies to formal investigations. Therefore, in each order appointing a court of inquiry or an investigation, the convening authority must so indicate if he desires any opinions or recommendations. As a general rule, both are called for and included in the report.

The appointing order names all members; counsel; and parties, if any have been designated by the convening authority; shows the time and place for meeting; and provides instructions as to the scope, or range, of the inquiry. When oaths are to be administered and the proceedings recorded verbatim, the appointing order so directs in all cases (see figure 12-1). In a court of inquiry, all testimony must be taken under oath and recorded verbatim even if not specifically directed in the appointing order.

The reason the appointing order contains such explicit directions is that the purpose of the inquiry is to assist the convening authority in performing his administrative duties. It follows then that the order convening the investigative body should contain ample instructions to enable the inquiry to accomplish its purpose.

What has been said in this section applies equally to informal investigations, except that an informal investigation may be ordered orally instead of by a written appointing order. Common practice, however, is to order informal investigations by written appointing order also.

## INVESTIGATING SPECIFIC INCIDENTS

When a fact-finding body is investigating an incident, appropriate regulations (i.e., *JAG Manual*) should be checked to ensure that all required information (or the lack of it) is developed and reported in the record of proceedings or investigative report. Some incidents, such as the loss or stranding of a ship, ship collisions or allisions, and accidental or intentional flooding of a ship, must be investigated in such a manner as to develop and report the specific items of information required under the circumstances. (See *JAG Manual*, Chapter IX). The primary objects of this type of investigation are to ascertain the cause of and individual responsibility for the incident.

The important thing to remember is that you should check all pertinent regulations concerning the matter under investigation to ensure that the investigation and the record are properly completed with all required information.

## DEFINITION OF A PARTY

Any member of the naval service whose conduct or performance of duty is subject to inquiry, such as when he is involved in an incident under investigation in a way that disciplinary action may follow, that his rights or privileges may be adversely affected, or that his personal reputation or professional standing may be jeopardized, must be designated a party before a court of inquiry and MAY be designated a party before a formal investigation. Any person subject to the UCMJ or employed by the Department of Defense (civilian) who has a direct interest in the inquiry may be designated

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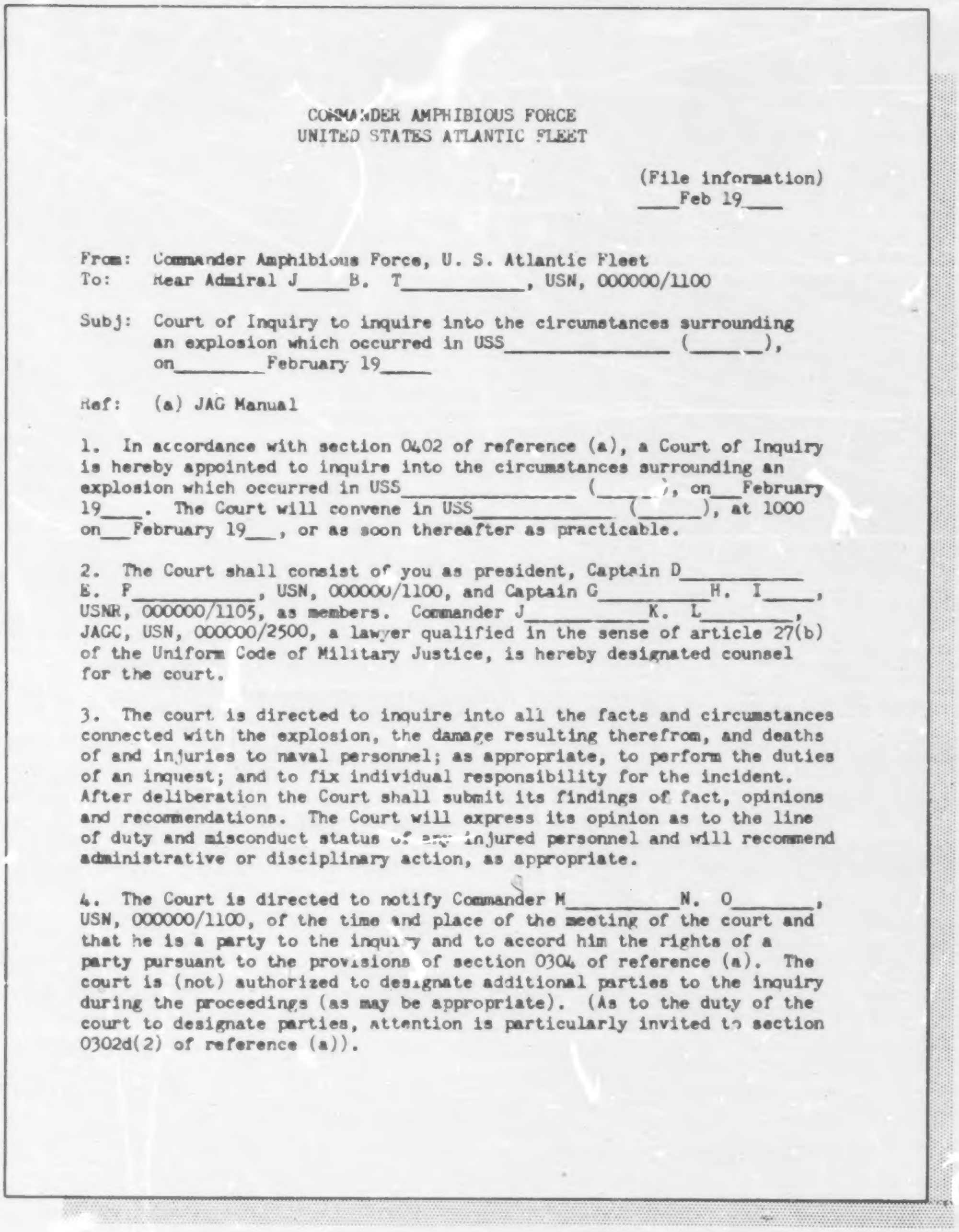


COMMANDER AMPHIBIOUS FORCE
UNITED STATES ATLANTIC FLEET

(File information)
____Feb 19___

From: Commander Amphibious Force, U. S. Atlantic Fleet
To: Rear Admiral J____B. T___________, USN, 000000/1100

Subj: Court of Inquiry to inquire into the circumstances surrounding an explosion which occurred in USS______________ (_____), on________February 19____

Ref: (a) JAG Manual

1. In accordance with section 0402 of reference (a), a Court of Inquiry is hereby appointed to inquire into the circumstances surrounding an explosion which occurred in USS_______________ (_____), on__February 19____. The Court will convene in USS____________ (_____), at 1000 on___February 19___, or as soon thereafter as practicable.

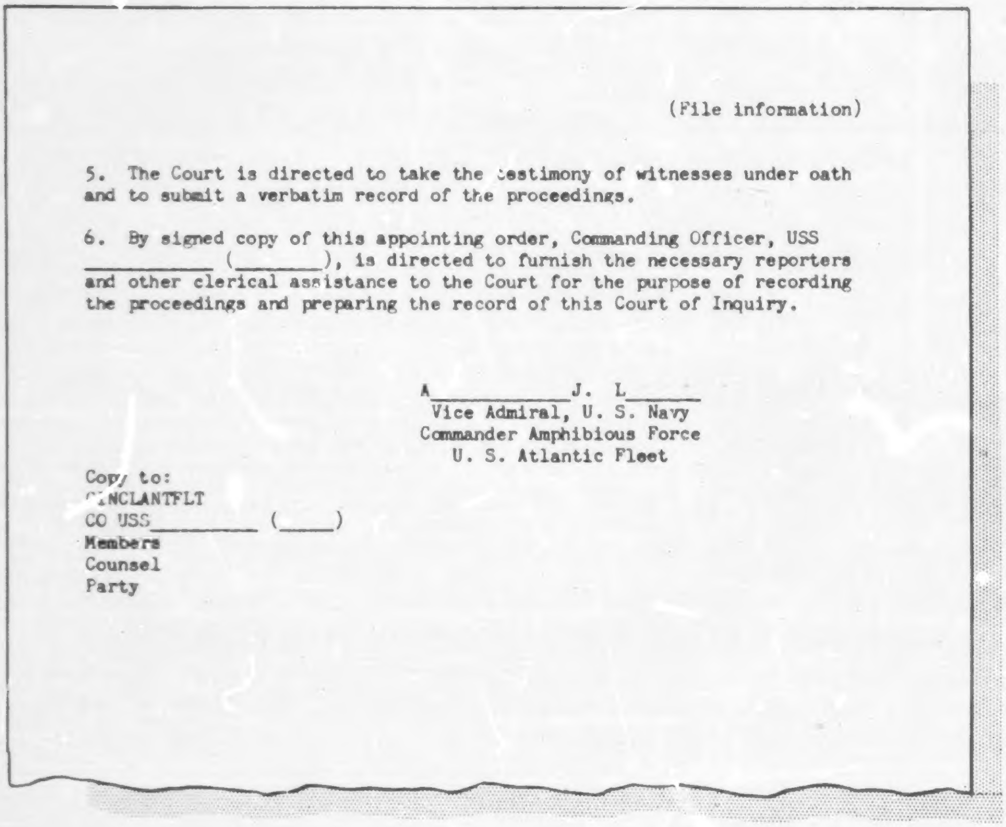
2. The Court shall consist of you as president, Captain D___________ E. F___________, USN, 000000/1100, and Captain G__________H. I____, USNR, 000000/1105, as members. Commander J___________K. L________, JAGC, USN, 000000/2500, a lawyer qualified in the sense of article 27(b) of the Uniform Code of Military Justice, is hereby designated counsel for the court.

3. The court is directed to inquire into all the facts and circumstances connected with the explosion, the damage resulting therefrom, and deaths of and injuries to naval personnel; as appropriate, to perform the duties of an inquest; and to fix individual responsibility for the incident. After deliberation the Court shall submit its findings of fact, opinions and recommendations. The Court will express its opinion as to the line of duty and misconduct status of any injured personnel and will recommend administrative or disciplinary action, as appropriate.

4. The Court is directed to notify Commander M__________N. O_______, USN, 000000/1100, of the time and place of the meeting of the court and that he is a party to the inquiry and to accord him the rights of a party pursuant to the provisions of section 0304 of reference (a). The court is (not) authorized to designate additional parties to the inquiry during the proceedings (as may be appropriate). (As to the duty of the court to designate parties, attention is particularly invited to section 0302d(2) of reference (a)).

21.41.1

Figure 12-1.—Appointing Order.



(File information)

5. The Court is directed to take the testimony of witnesses under oath and to submit a verbatim record of the proceedings.

6. By signed copy of this appointing order, Commanding Officer, USS ___________ (_______), is directed to furnish the necessary reporters and other clerical assistance to the Court for the purpose of recording the proceedings and preparing the record of this Court of Inquiry.

A___________J. L______
Vice Admiral, U. S. Navy
Commander Amphibious Force
U. S. Atlantic Fleet

Copy to:
CINCLANTFLT
CO USS_________ (_____)
Members
Counsel
Party

21.41.2

Figure 12-1.—Appointing Order—(Continued).

a party before a court of inquiry, but only upon his own request. A person is said to have a direct interest when the results of the investigation may reflect questionable or unsatisfactory conduct or performance of duty on his part, or when it may relate to a matter over which the person has a duty or right to exercise official control, even though he may not be directly involved in the incident under investigation. He should then request to be made a party if only for his own protection. It may be the only chance he'll have to give his side of the story.

Any member of the Naval or Marine Corps Reserve not subject to the UCMJ by virtue of his status whose conduct or performance of duty is subject to inquiry may, upon request, be designated a party before a court of inquiry.

When authorized by the convening authority, any member of an armed force other than the Navy and Marine Corps subject to the UCMJ, any person employed by the Department of Defense, or any member of the Naval or Marine Corps Reserve not subject to the UCMJ by virtue of his status, whose conduct or performance of duty is subject to inquiry, MAY, upon request, be designated a party before a formal investigation.

No other persons may be designated parties unless expressly authorized by the Secretary of the Navy (Judge Advocate General).

It should be noted that there will be parties before a formal investigation ONLY when such status is specifically authorized by the convening authority.

If it is known at the outset that certain persons should be designated as parties, the convening authority names them as such in his appointing order. The power to designate parties, however, does not end there. A convening authority may designate parties at any time throughout an inquiry. A court of inquiry may designate parties when appropriate throughout the proceedings; a formal investigation may do so only if expressly authorized in the convening order. When it is decided to name a person as a party at some point in the proceedings, the fact-finding body informs him immediately, giving the reasons, and accords him his rights as a party.

## RIGHTS OF A PARTY

A person's rights as a party are similar in many respects to the rights of a defendant in a court-martial. They include the legal "right" to:

1. Be given due notice of designation as a party.
2. Be present during the proceedings, but not when the investigation is cleared for deliberations.
3. Be represented by counsel.
4. Challenge members for cause (courts of inquiry only)
5. Object to the testimony of witnesses and to cross examine witnesses other than his own.
6. Introduce evidence.
7. Testify as a witness.
8. Refuse to incriminate himself; and if accused or suspected of an offense, to be informed of the nature of the accusation and advised that he does not have to make any statement regarding the offense of which he is accused or suspected; and that any statement made by him may be used as evidence against him in a trial by court-martial.
9. Make a voluntary statement, oral or written, for inclusion in the record.
10. Make an argument at the conclusion of presentation of evidence.
11. If charged with an offense, be a witness at his own request and not be called as a witness in the absence of his own request (courts of inquiry only).
12. To examine, and to object to the introduction of physical and documentary evidence and written statements.

Each person's rights as a party are explained to him, and if he asks for counsel, one is provided before the inquiry goes any further. The proceedings which have gone before (if a party is designated during the hearing) are made available to the party and his counsel for examination. If it can be done, witnesses he wishes to cross-examine are recalled.

If for some reason a designated party cannot appear, or if he waives his right to appear, notation to that effect is included in the investigative report made to the convening authority. When a party or his counsel is absent for good cause the hearing must adjourn until the party returns or he waives the right to be present. If counsel is absent the inquiry cannot proceed until new counsel is retained or appointed for the party unless this right is waived by the party. The right to appear is waived when a party, having reasonable opportunity to appear, does not make use of the opportunity. Except for cases falling under item 11, a party may be under an official duty to appear when called as a witness; in such a case, the party will then have an opportunity to exercise all pertinent rights; see item 8. In other words, in a case falling under 11, a party may not be called as a witness except upon his own request; in all other cases, a party may be called as a witness but may then exercise his rights, such as refusing to make any statement regarding any offense of which he is accused or suspected. As indicated in the list of rights of a party, item 4 (the right to challenge a member) applies only to courts of inquiry. In formal investigations, a party who has reason to believe that a member of the board or the investigator cannot approach the matter under investigation with an open mind may present the issue and the convening authority will decide the issue and, in appropriate cases, replace the member.

Failure to designate a person as a party (to inform him that he is a party and tell him what his rights are) may preclude the use of the record of proceedings as evidence in any trial by court-martial. Article 50, UCMJ, on discussing admissibility of evidence in certain cases, states that ". . . the sworn testimony . . . may be read in evidence . . . if the accused was a party before the court of inquiry."

## COURT OF INQUIRY

It goes without saying that the president is the presiding officer of a court of inquiry. He administers the oath to counsel for the court, preserves order, decides on matters of routine business, and recesses or adjourns the court as he feels convenient and proper. Should another member object to one of his decisions, the vote of the majority governs; if the vote results in a tie, the decision of the president governs (except that in the case of a challenge, a tie vote disqualifies the challenged member).

In the absence of any member, the court proceeds only when directed by the convening authority. When the absence of a member for more than a short period of time reduces the membership to less than three, the convening authority appoints another permanent member. The rule for composition of a court of inquiry is that there must always be at least three members present. If the number of those present is reduced below three, no business other than adjournment may be transacted.

Counsel for the court arranges for a hearing room and equipment; supervises orderlies and clerical assistants; calls witnesses and administers oaths; and conducts direct examination of witnesses (except those witnesses requested by a party). The primary responsibility of counsel for the court is to exploit all practicable sources of information to bring out all the facts in an impartial manner.

Counsel for a party represents the party to the best of his ability, safeguarding his interests by all honorable and legal means. Unless the party waives his right, court does not proceed in the absence of party's counsel.

## GENERAL RULES OF PROCEDURE

In conducting the inquiry, the court is not bound by the strict rules of evidence prescribed for courts-martial. The court, however, because it must enforce constitutional and statutory restrictions, generally observes the rules of evidence which apply before courts-martial (*MCM*, Rev. Ed., 1969). This ensures orderly procedure and increases the probability of a full, fair, and impartial investigation.

### Assembly of Court

The court assembles at the place and, as nearly as practicable, the time named in the appointing order. Members take their seats in the same order of seniority as on courts-martial. The appointing order is read and the manner of proceedings decided; usually the court is cleared until this is done. The proceedings are held in open sessions unless the convening authority or the court, for security reasons or other good cause, decides that the entire proceedings or any portion thereof be closed to the public. The fact that the inquiry is held in closed session does not exclude the parties and their counsel.

### Rights of Parties Explained

Parties named in the appointing order are called before the court and the appointing order read to them. Their rights as parties are explained to them by counsel for the court.

### Challenges

Members may be challenged at any time, but for only one reason: that the member challenged cannot approach the inquiry with an open mind and impartiality. If a challenging party wishes to examine the challenged member under oath, he may do so. The burden of proof is on the challenger. Counsel for the court may cross-examine. A challenged member withdraws when the court is cleared for a ruling. When the other members vote on the challenge, the decision is made by majority vote, but a tie vote on a challenge disqualifies the challenged member. If the challenged member is disqualified, he is excused and a report is made to the convening authority. Should a sustained challenge reduce the membership to less than three, court adjourns until the convening authority appoints another member.

### Swearing of Court

Members are sworn by counsel for the court, then counsel for the court (and assistant counsel for the court, if any) are sworn by the president, and the reporter is sworn by counsel for the court. Witnesses and interpreters, if any, are sworn by counsel for the court as they appear.

### Examination of Witnesses

Witnesses are examined as in courts-martial: direct, cross, redirect, recross, and examination by the court. Witnesses usually appear in this order: those called by counsel for the court, those called for a party, those called by counsel for the court in rebuttal, those called for a party in rebuttal, and those requested by the court. The order of presentation may be changed just as long as the interests of any party are not prejudiced.

### Marking Exhibits

Exhibits are numbered consecutively as they are received. Real evidence (knives, firearms, rope, etc.,) usually is not made a part of the record. Photographs or descriptions are substituted in the record, and the items of real evidence are sent to the convening authority. If disciplinary actions follows, the articles are retained by him for use as evidence at the trial. If no disciplinary action follows, the articles are returned to their owners or otherwise properly disposed of.

### Visiting Scene of Incident

When practicable, it may be desirable that the court visit the scene of the incident being investigated. Since the only purpose of the visit is to acquaint the court with the physical characteristics of the scene, testimony usually is not taken during the visit. As reporter, however, you play a very important part here. The court must be accompanied to the scene by counsel for the court, the parties and their counsel, and the reporter. As the reporter, you have the job of making such notes and recording such data as the counsel for the court may direct.

### Unsworn Statement By Party

After all witnesses have testified, a party may make an unsworn factual statement. The statement may be oral or written, and may be made by the party or his counsel. It should be factual, not argumentative, in nature. The party may not be cross-examined upon this unsworn statement. However, counsel for the court or any of the other parties may introduce evidence to rebut any statements of fact contained in the unsworn statement.

### Concluding Arguments

Counsel for the court and counsel for the party or parties may make concluding arguments. Counsel for the court makes the opening argument, and if any argument is made by a party, the closing argument. The impartial role by the counsel for the court must not be abandoned. If counsel for the court presents argument, his remarks should be in the nature of a summation of the evidence rather than partisan advocacy.

## INVESTIGATIONS

The method of procedure for investigations is dictated by the contents of the appointing order and the circumstances of each case. The senior officer of the board acts as senior member, and his duties are almost the same as those of the president of a court of inquiry.

In an informal investigation, the investigator or the board of investigation determines the method of procedure. If they wish to use hearing-room methods, as in a court of inquiry or in a formal investigation, they may do so; if they believe that signed statements of witnesses, rather than direct testimony, are acceptable, they may use that method. They may even combine the two methods. An informal board or informal one-man investigation may administer oaths to witnesses unless the convening authority directs otherwise. The members of formal and informal boards are not sworn. Remember, parties may not be designated in an informal investigation.

As discussed earlier in this chapter, parties in a formal investigation have no right of challenge. When a party, however, has reason to believe that a member of the board or the investigating officer cannot approach the investigation with an open mind, this issue must be reported to the convening authority for a determination and possible replacement of the member. In a board of investigation, a party may examine the member on the issue; but a party has no such right in a formal one-officer investigation. Except that there is no right of challenge, the rights of a party generally remain the same regardless of the method of procedure. One other exception was noted above under "Rights of a Party": if a party is charged with an offense, he may not be called as a witness in a court of inquiry except at his own request. In other *JAG Manual* investigations, a party may be called as a witness but may refuse to incriminate himself or to make any statement regarding any offense of which he is accused or suspected (regardless of whether such statement would incriminate him). When an investigation is conducted in such a way that no formal hearing is held, a party, in lieu of the right to "be present during the proceedings," is allowed to examine all evidence before the investigative report is prepared.

As far as obtaining evidence goes, the rules are the same for formal investigations as for courts of inquiry. Although informal investigations are not so rigidly governed, they must still enforce the same constitutional and statutory restrictions as the court of inquiry; they may obtain evidence through such means as formal testimony of witnesses, informal personal interview, correspondence, and telephone inquiry. In case of the last, though, the substance of the evidence (telephone information) must be reduced to writing and be signed by the investigator.

## AFFIDAVITS AND DEPOSITIONS

There are bound to be times when a witness whose testimony is needed cannot attend a hearing in person. An affidavit of such a witness may be received in evidence by the court of inquiry, board of investigation, or single individual investigation. Should a situation arise in a court or other formal investigation in which the deposition of a witness is desired, the deposition may be taken on oral or written interrogatories. See Chapter 4 for the procedures to be followed.

## STATEMENTS OF WITNESSES

As a senior Legalman, you should expect to be assigned as investigating officer for informal investigations from time to time. During these investigations you will have to interview and take statements from witnesses. Generally, your witness will fall into one of the following categories:

- He will *not* be suspected of misconduct or improper performance of duty;
- He *will* be suspected of an offense, misconduct, or improper performance of duty; or
- He will be suffering from a disease or injury which is the subject of the investigation.

As previously stated, the method of interviewing witnesses in informal investigations is determined by the investigator or board of investigation. However, in the great majority of cases, the witness simply relates his knowledge of the incident during an informal interview and it is then reduced to writing and signed. You, as the investigator, may assist the witness in preparing his written statement to avoid excessive inclusion of irrelevant material or the omission of important facts and circumstances which are within his knowledge, but you should take care to ensure that the statement is phrased in the actual language of the witness. You must also avoid coaching the witness or suggesting the existence or non-existence of material fact.

In the case of a witness suspected of an offense, you ordinarily should collect all relevant information from all available sources other than the suspected person before interviewing him. Appropriate warnings under Article 31, UCMJ, must be given, and if it appears that prosecution of the person for the suspected offense may ensue, he must also be advised of his right to counsel. (Refer to Chapter 5 for an extensive discussion of required warnings).

Before interviewing a witness who is suspected of misconduct or improper performance of duty, he should be advised generally of the nature of the inquiry and of the possible effect of an adverse determination. Such person should then be given an opportunity to discuss the matter with someone *not* acting for the Government in connection with the investigation.

When interviewing a witness suffering from a disease or injury, you should bear in mind that a member of the Armed Forces *may not be required* to sign a statement relating to the origin, incurrence, or aggravation of the disease or injury that he has. Any such statement against his interests, signed by a member, is invalid. Before asking a person to sign any statement relating to the origin, incurrence, or aggravation of any disease or injury that he has suffered, you must advise him of his right *not* to sign such a statement.

Generally, the signature(s) of the investigator/board members to the investigative report constitutes authentication of all enclosures to the report. However, the statement of a witness should be signed by him or should be certified to be either an accurate summary, or the verbatim transcript, of oral statements made by him.

## INVESTIGATIVE REPORTS

Courts of Inquiry and, subject to the instructions contained in the appointing order, formal investigations prepare a record of proceedings which includes the testimony of witnesses and all procedural occurrences such as challenges (in a court of inquiry), statements of parties, and arguments. Informal investigations prepare an investigative report in naval letter form with summarized or verbatim testimony of witnesses, or their signed statements, enclosed with the report.

After all the evidence is in and all statements and arguments received, the fact-finding body considers the evidence and re-examines the instructions in the appointing order.

A fact-finding body always reports its findings of fact; that's the reason it was convened. The members recheck the appointing order to be sure they have covered the full scope of the inquiry and to be sure the order calls for opinions and recommendations before these are included in the report.

### FINDING OF FACT

Findings of fact include only those facts which the fact-finding body believes the evidence establishes. A fact, to be shown as such, need not be proved beyond a reasonable doubt; substantial evidence in the record is adequate. The findings must be specific as to times, places, persons, and events. Each fact should be made a separate finding except that the time and place of an incident may be grouped into one finding. Further information on findings of fact in informal investigations is contained below.

### OPINIONS

When the appointing order calls for opinions, all conclusions or opinions drawn from the facts are shown. Opinions may include inferences drawn from the facts, opinions as to performance of duty, and opinions as to function of equipment involved.

In certain cases, opinions are required by statute. When investigating a complaint of willful damage to property, for example, the fact-finding body is required by the provisions of Article 139, UCMJ, regarding redress of injuries to property, to state its opinion as to the amount of damage. If the convening authority approves the report, this amount, up to $250.00 per offender for any single act or incident, may be charged against the pay of the offenders.

Again in each case of injury or disease requiring investigation, opinions must be given concerning the line of duty and misconduct status of the injured or diseased person.

In cases of death, no statement of opinion relating to misconduct and line of duty status of the deceased is required or expressed.

When death or injury cases are investigated, an opinion must be stated whether the death or injury was caused by the intent, fault, negligence, or inefficiency of any person or persons in the naval service or connected therewith.

### RECOMMENDATIONS

When the appointing order calls for recommendations, the fact-finding body makes such recommendations as are specifically directed and any others that seem advisable in view of the nature of the facts found. If any member recommends trial by court-martial, a charge sheet, signed and sworn to by the member so recommending, is prepared and submitted to the convening authority with the record of proceedings.

### Disagreement Among Members

The report of a court of inquiry or a board of investigation consisting of more than two members is based on the opinion of the majority. Any member not agreeing with the majority appends a signed minority report, stating the parts of the majority report with which he disagrees and giving his reasons.

If there are two members of a board of investigation and they cannot agree on the final report, the record is signed by the senior member, the junior member submitting a dissenting report as above.

Examples of findings of fact, opinions and recommendations, including a dissenting report appear in figure 12-2.

## RECORDS OF COURT OF INQUIRY AND FORMAL INVESTIGATION

The record of proceedings of a court of inquiry or of a formal investigation includes the original appointing order; any other communications from the convening authority; an accurate transcript of the proceedings, including the verbatim testimony; the report of the court or board containing the findings of fact, opinions and recommendations, if required; and any documents and exhibits necessary to complete the record; all in the order given. A copy is made of the report (findings of fact, opinions, and recommendations) and is prefixed to the front of the record. (See fig. 12-3.)

Unless there is a minority or dissenting report, all members sign the report immediately under the findings of fact, opinions, and recommendations. The record is authenticated by the president and counsel for the court.

## REPORTS OF INFORMAL INVESTIGATIONS

The report of an informal investigation is submitted in letter form to the convening authority. It consists of a preliminary statement, the findings of fact, opinions and recommendations (when required), and enclosures.

The preliminary statement sets forth the nature of the investigation and details concerning any difficulties encountered, and any limited participation by a member. This preliminary statement contains information necessary for a complete review of the case, since most of these data are not contained in the enclosures. It also informs the reviewing authorities that all legal requirements have been met.

The findings of fact section of the report contains the facts developed in the course of the investigation. As stated above, each fact may be made a separate finding or the facts may be grouped into a narrative. However, it is usually easier to record each fact separately and that is the recommended procedure. Each finding of fact must be supported by evidence contained in enclosures to the investigative report. While not specifically required by the *JAGMAN*, it is also a good idea and the recommended procedure for each finding of fact to contain a reference by number to the enclosure(s) on which it is based.

The first enclosure to the report is the original appointing order. The following enclosures contain all evidence developed by the investigation. Each affidavit, deposition, each witness' testimony, each statement, and each argument is contained in the record as a separate enclosure. Each item of documentary evidence and each exhibit is also a separate enclosure. (See fig. 12-4).

## SUBMISSION OF RECORDS

The record of proceedings or the investigative report is sent to the convening authority who forwards it to the Judge Advocate General via appropriate reviewing authorities. The number of copies to be made and forwarded depends on the subject matter of the inquiry and the number of reviewing authorities. This information is usually available from the counsel for the court. Extra copies are usually needed, for

FINDINGS OF FACT

1. That merchandise valued at about $150 was stolen from the ship's store during the period from 1 May 19__ to 7 May 19__.
2. That Elton Q. Jones, SH3, was assigned responsibility for the ship's store during that period.
3. .....
4. .....

OPINIONS

1. That Jones unlawfully took merchandise valued at about $150 from the ship's store.
2. .....
3. .....

RECOMMENDATION

1. That Elton Q. Jones, Ship's Serviceman third class, U.S. Navy, be brought to trial by special court-martial on the charge of violation of Article 121, Uniform Code of Military Justice. The appropriate charge sheet, signed by the senior member of this board as accuser, is forwarded herewith.

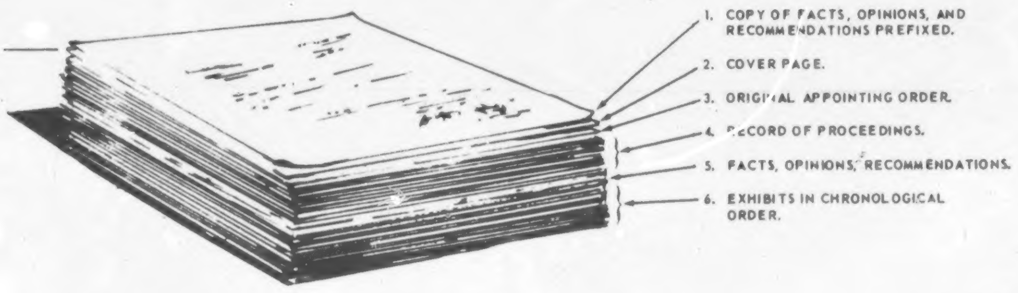
A__________ B. C________________
Commander, U.S. Navy,
Senior Member

I agree with the findings, opinions, and recommendation of the board except in the following respects:
1. I disagree with paragraph 3 of the board's findings because.....
2. I disagree with paragraph 2 of the board's opinions because.....

D_________ E. F__________________
Lieutenant, U.S. Navy, Member

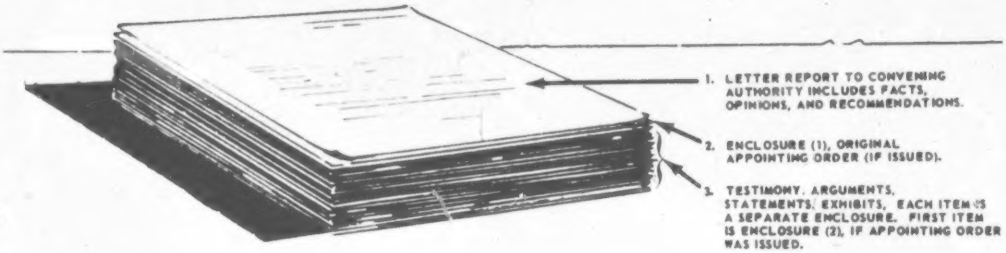
138.10

Figure 12-2.—Examples of findings of fact, opinions and recommendations.


1. COPY OF FACTS, OPINIONS, AND RECOMMENDATIONS PREFIXED.
2. COVER PAGE.
3. ORIGINAL APPOINTING ORDER.
4. RECORD OF PROCEEDINGS.
5. FACTS, OPINIONS, RECOMMENDATIONS.
6. EXHIBITS IN CHRONOLOGICAL ORDER.

21.42

**Figure 12-3.—Record of court of inquiry and formal investigation.**


1. LETTER REPORT TO CONVENING AUTHORITY INCLUDES FACTS, OPINIONS, AND RECOMMENDATIONS.
2. ENCLOSURE (1), ORIGINAL APPOINTING ORDER (IF ISSUED).
3. TESTIMONY, ARGUMENTS, STATEMENTS, EXHIBITS, EACH ITEM IS A SEPARATE ENCLOSURE. FIRST ITEM IS ENCLOSURE (2), IF APPOINTING ORDER WAS ISSUED.

21.43

**Figure 12-4.—Report of informal investigation.**

instance, if the case involves redress for damages to property, or if the inquiry serves as a pretrial investigation for a general court-martial. In case of the latter, once trial by GCM has been ordered, any party having been recommended by the fact-finding body for trial is entitled to a copy of the record.

The convening authority forwards the complete original record of proceedings to the Judge Advocate General, Navy Department, Washington, D.C. 20370, via appropriate reviewing authorities. In serious cases, and others where he considers the Navy Department should have advance information, the convening authority forwards an advance copy to the JAG upon receipt of the record.

## OBLIGATION OF SECRECY

If you at any time participate in an investigation in any capacity, you may not publish or disclose to anyone any finding, opinion, or recommendation contained in the record without permission of the Secretary of the NAVY (Judge Advocate General).

## ACTION BY REVIEWING AUTHORITIES

Each reviewing authority, including JAG, will take action on the record by letter endorsement. Generally, the action is one of the following:

*Return of the record for additional proceedings.* The endorsement returning the record contains explicit instructions as to the action desired.

*Comments and approval.* If no additional proceedings are directed, the convening and reviewing authorities state their comments and record their approval or disapproval, in whole or in part, of the proceedings, findings, opinions, and recommendations. Each reviewing authority states what action he has taken, will take, or, recommends as a result of matters disclosed in the record, including disciplinary action of any nature.

## MISCONDUCT AND LINE OF DUTY

Cases of injury resulting in loss of time from duty not exceeding 24 hours require no investigative report by a fact-finding body unless such report is required for a different reason as listed below.

Cases of injury resulting in loss of time for more than 24 hours, but not likely to result in permanent disability or, in the case of injury resulting from enemy action even if likely to result in permanent disability, require no investigative report by a fact-finding body if both medical officer and commanding officer are of the view that the injury was incurred in line of duty without misconduct on the part of the member and if there are no other circumstances as listed below which require an investigative report. The pertinent factual and medical details are recorded in the Health Record of the individual.

In cases in which an investigative report is not required, a preliminary investigation may have to be made so that the commanding officer can determine the line of duty and misconduct status.

Cases of injury which may result in permanent disability require an investigative report. However, if the medical officer and commanding officer are of the view that the injury was incurred in line of duty without misconduct on the part of the injured member, and if there are no other circumstances as listed below which require an investigative report, the case is reported by way of an Accidental Injury/Death Report (OPNAV Form 5100/1) filled out by the medical officer and the commanding officer and then forwarded via the officer exercising general court-martial jurisdiction to the Judge Advocate General. (See fig. 12-5 for a filled in sample).

Cases of injury require an investigative report by a fact-finding body when:

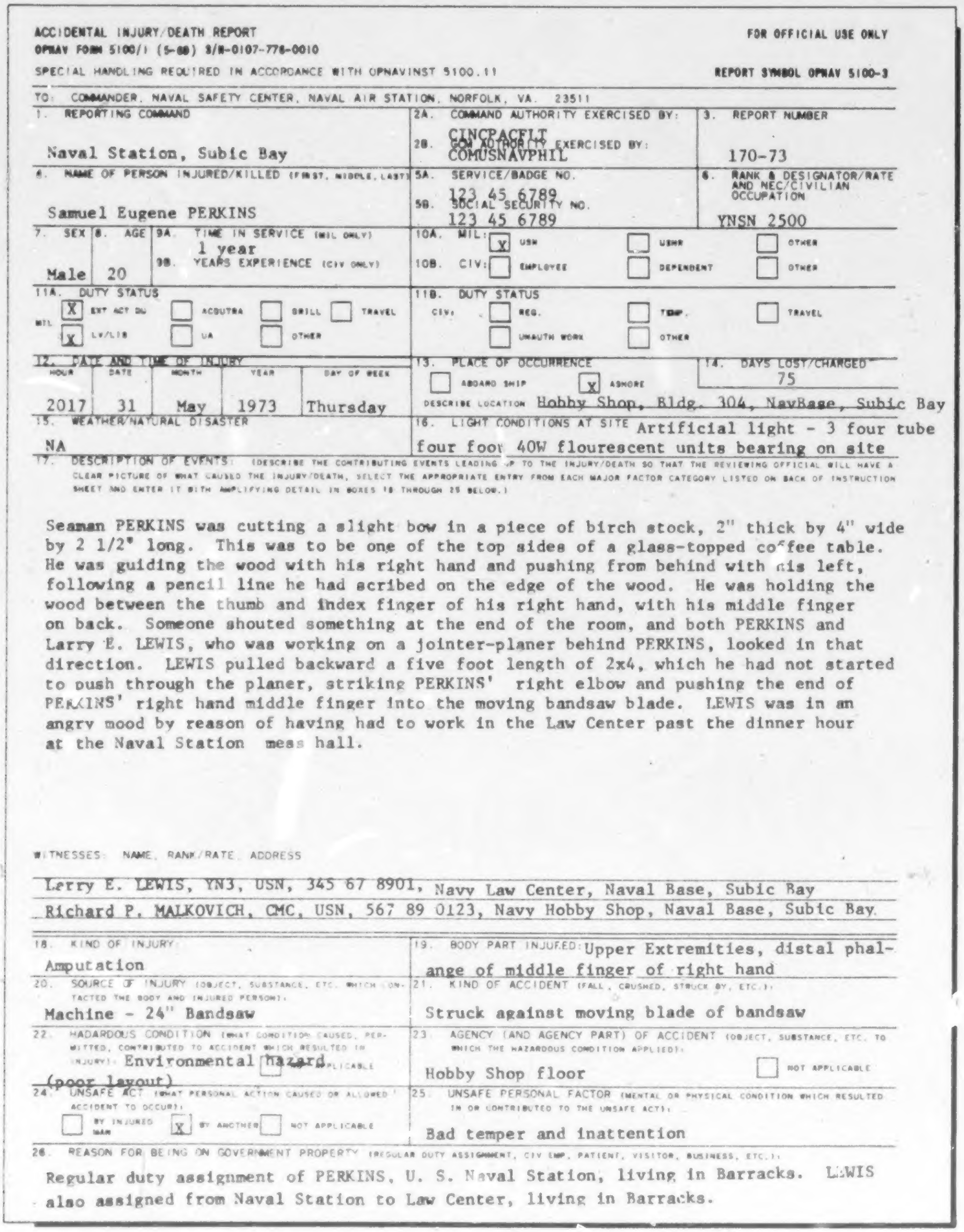
- Loss of time from duty exceeds 24 hours; and
- The injury may be permanent and may have been incurred due to misconduct of the member or not in the line of duty.
- The injury resulted from enemy action under circumstances suggesting misconduct or not in line of duty.
- The injury resulted in death. (The Death Report Form may be utilized to report the circumstances when the medical officer and commanding officer are of the view that the death was incurred in the line of duty without misconduct, not apparent suicide, or did not occur as the result of enemy action). However, while an investigative report is required, the findings of fact are not followed by opinions as to line of duty or misconduct.
- The injury was incurred under unusual or peculiar circumstances.
- The injury was incurred by members of the Naval Reserve or Marine Corps Reserve en route to or from a period of active duty, training duty, or an inactive-duty training (drill) period.
- Claims are possible for or against the Government under Chapters XX through XXIV of the *JAG Manual.*
- There is any question of the mental responsibility or mental capacity of the injured party, if the injured party's behavior was a contributing factor to the injury.
- Convening or higher authority determines that the best interests of the naval service or the individual would be served by an investigative report.

Every case of death from injuries or under peculiar circumstances; every case of disease or injury due to vicious habits, intemperance, or other factors suggesting misconduct or actions not in line of duty MUST be investigated by a fact-finding body. And in cases involving injury, determination must be made by the body as to misconduct and line of duty.

In any formal investigation which might possibly result in an opinion of misconduct or not in line of duty, the injured person is designated a party and accorded his rights as such.

In any informal investigation, if the convening authority has substantial doubts that the injury was incurred in line of duty or not as the result of misconduct, then he must afford the member a hearing.

An adverse finding as to misconduct and line of duty is never applied as a punitive measure.



ACCIDENTAL INJURY/DEATH REPORT
OPNAV FORM 5100/1 (5-68) S/N-0107-776-0010
SPECIAL HANDLING REQUIRED IN ACCORDANCE WITH OPNAVINST 5100.11

FOR OFFICIAL USE ONLY
REPORT SYMBOL OPNAV 5100-3

TO: COMMANDER, NAVAL SAFETY CENTER, NAVAL AIR STATION, NORFOLK, VA. 23511

|  |  |  |
|---|---|---|
| 1. REPORTING COMMAND<br>Naval Station, Subic Bay | 2A. COMMAND AUTHORITY EXERCISED BY:<br>CINCPACFLT<br>2B. GCM AUTHORITY EXERCISED BY:<br>COMUSNAVPHIL | 3. REPORT NUMBER<br>170-73 |
| 4. NAME OF PERSON INJURED/KILLED (FIRST, MIDDLE, LAST)<br>Samuel Eugene PERKINS | 5A. SERVICE/BADGE NO.<br>123 45 6789<br>5B. SOCIAL SECURITY NO.<br>123 45 6789 | 6. RANK & DESIGNATOR/RATE AND NEC/CIVILIAN OCCUPATION<br>YNSN 2500 |

7. SEX: Male
8. AGE: 20
9A. TIME IN SERVICE (MIL ONLY): 1 year
9B. YEARS EXPERIENCE (CIV ONLY):

10A. MIL: ☒ USN ☐ USNR ☐ OTHER
10B. CIV: ☐ EMPLOYEE ☐ DEPENDENT ☐ OTHER

11A. DUTY STATUS
MIL: ☒ EXT ACT DU ☐ ACDUTRA ☐ DRILL ☐ TRAVEL
☒ LV/LIB ☐ UA ☐ OTHER

11B. DUTY STATUS
CIV: ☐ REG. ☐ TEMP. ☐ TRAVEL
☐ UNAUTH WORK ☐ OTHER

12. DATE AND TIME OF INJURY

| HOUR | DATE | MONTH | YEAR | DAY OF WEEK |
|---|---|---|---|---|
| 2017 | 31 | May | 1973 | Thursday |

13. PLACE OF OCCURRENCE: ☐ ABOARD SHIP ☒ ASHORE
DESCRIBE LOCATION Hobby Shop, Bldg. 304, NavBase, Subic Bay

14. DAYS LOST/CHARGED: 75

15. WEATHER/NATURAL DISASTER: NA

16. LIGHT CONDITIONS AT SITE Artificial light - 3 four tube four foot 40W flourescent units bearing on site

17. DESCRIPTION OF EVENTS: (DESCRIBE THE CONTRIBUTING EVENTS LEADING UP TO THE INJURY/DEATH SO THAT THE REVIEWING OFFICIAL WILL HAVE A CLEAR PICTURE OF WHAT CAUSED THE INJURY/DEATH, SELECT THE APPROPRIATE ENTRY FROM EACH MAJOR FACTOR CATEGORY LISTED ON BACK OF INSTRUCTION SHEET AND ENTER IT WITH AMPLIFYING DETAIL IN BOXES 18 THROUGH 25 BELOW.)

Seaman PERKINS was cutting a slight bow in a piece of birch stock, 2" thick by 4" wide by 2 1/2" long. This was to be one of the top sides of a glass-topped coffee table. He was guiding the wood with his right hand and pushing from behind with his left, following a pencil line he had scribed on the edge of the wood. He was holding the wood between the thumb and index finger of his right hand, with his middle finger on back. Someone shouted something at the end of the room, and both PERKINS and Larry E. LEWIS, who was working on a jointer-planer behind PERKINS, looked in that direction. LEWIS pulled backward a five foot length of 2x4, which he had not started to push through the planer, striking PERKINS' right elbow and pushing the end of PERKINS' right hand middle finger into the moving bandsaw blade. LEWIS was in an angry mood by reason of having had to work in the Law Center past the dinner hour at the Naval Station mess hall.

WITNESSES: NAME, RANK/RATE, ADDRESS

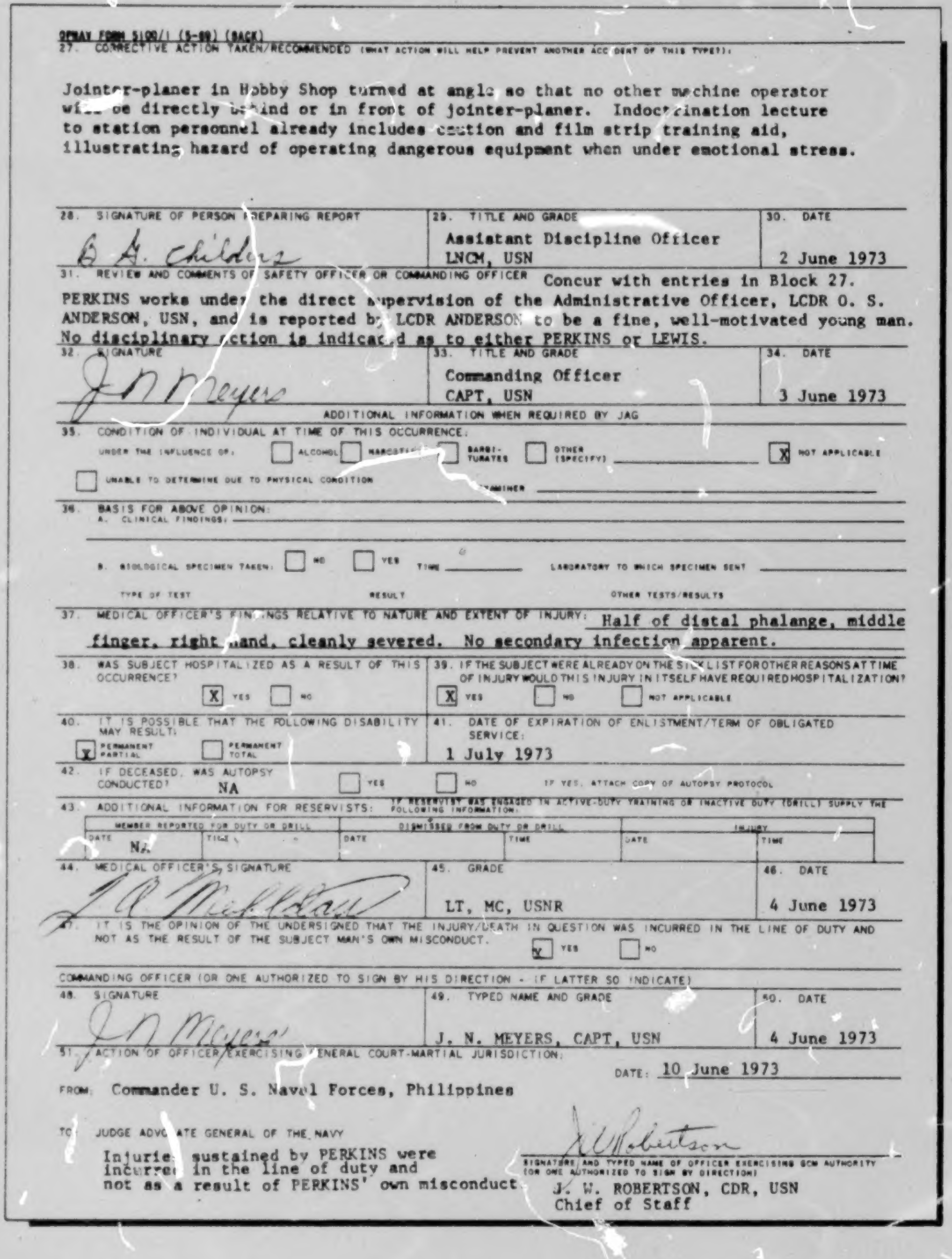
Larry E. LEWIS, YN3, USN, 345 67 8901, Navy Law Center, Naval Base, Subic Bay
Richard P. MALKOVICH, CMC, USN, 567 89 0123, Navy Hobby Shop, Naval Base, Subic Bay

|  |  |
|---|---|
| 18. KIND OF INJURY:<br>Amputation | 19. BODY PART INJURED: Upper Extremities, distal phalange of middle finger of right hand |
| 20. SOURCE OF INJURY (OBJECT, SUBSTANCE, ETC. WHICH CONTACTED THE BODY AND INJURED PERSON):<br>Machine - 24" Bandsaw | 21. KIND OF ACCIDENT (FALL, CRUSHED, STRUCK BY, ETC.):<br>Struck against moving blade of bandsaw |
| 22. HAZARDOUS CONDITION (WHAT CONDITION CAUSED, PERMITTED, CONTRIBUTED TO ACCIDENT WHICH RESULTED IN INJURY): Environmental hazard (poor layout) ☐ NOT APPLICABLE | 23. AGENCY (AND AGENCY PART) OF ACCIDENT (OBJECT, SUBSTANCE, ETC. TO WHICH THE HAZARDOUS CONDITION APPLIED):<br>Hobby Shop floor ☐ NOT APPLICABLE |
| 24. UNSAFE ACT (WHAT PERSONAL ACTION CAUSED OR ALLOWED ACCIDENT TO OCCUR):<br>☐ BY INJURED MAN ☒ BY ANOTHER ☐ NOT APPLICABLE | 25. UNSAFE PERSONAL FACTOR (MENTAL OR PHYSICAL CONDITION WHICH RESULTED IN OR CONTRIBUTED TO THE UNSAFE ACT):<br>Bad temper and inattention |

26. REASON FOR BEING ON GOVERNMENT PROPERTY (REGULAR DUTY ASSIGNMENT, CIV EMP, PATIENT, VISITOR, BUSINESS, ETC.):
Regular duty assignment of PERKINS, U. S. Naval Station, living in Barracks. LEWIS also assigned from Naval Station to Law Center, living in Barracks.

192.92.1

Figure 12-5.–Accidental Injury/Death Report.



OPNAV FORM 5100/1 (5-69) (BACK)

27. CORRECTIVE ACTION TAKEN/RECOMMENDED (WHAT ACTION WILL HELP PREVENT ANOTHER ACCIDENT OF THIS TYPE?):

Jointer-planer in Hobby Shop turned at angle so that no other machine operator will be directly behind or in front of jointer-planer. Indoctrination lecture to station personnel already includes caution and film strip training aid, illustrating hazard of operating dangerous equipment when under emotional stress.

| | | |
|---|---|---|
| 28. SIGNATURE OF PERSON PREPARING REPORT<br>B. A. Childers | 29. TITLE AND GRADE<br>Assistant Discipline Officer<br>LNCM, USN | 30. DATE<br>2 June 1973 |

31. REVIEW AND COMMENTS OF SAFETY OFFICER OR COMMANDING OFFICER Concur with entries in Block 27. PERKINS works under the direct supervision of the Administrative Officer, LCDR O. S. ANDERSON, USN, and is reported by LCDR ANDERSON to be a fine, well-motivated young man. No disciplinary action is indicated as to either PERKINS or LEWIS.

| | | |
|---|---|---|
| 32. SIGNATURE<br>J N Meyers | 33. TITLE AND GRADE<br>Commanding Officer<br>CAPT, USN | 34. DATE<br>3 June 1973 |

ADDITIONAL INFORMATION WHEN REQUIRED BY JAG

35. CONDITION OF INDIVIDUAL AT TIME OF THIS OCCURRENCE:

UNDER THE INFLUENCE OF: ☐ ALCOHOL ☐ NARCOTICS ☐ BARBITURATES ☐ OTHER (SPECIFY) ______ ☒ NOT APPLICABLE

☐ UNABLE TO DETERMINE DUE TO PHYSICAL CONDITION EXAMINER ______

36. BASIS FOR ABOVE OPINION:

A. CLINICAL FINDINGS: ______

B. BIOLOGICAL SPECIMEN TAKEN: ☐ NO ☐ YES TIME ______ LABORATORY TO WHICH SPECIMEN SENT ______

TYPE OF TEST RESULT OTHER TESTS/RESULTS

37. MEDICAL OFFICER'S FINDINGS RELATIVE TO NATURE AND EXTENT OF INJURY: Half of distal phalange, middle finger, right hand, cleanly severed. No secondary infection apparent.

38. WAS SUBJECT HOSPITALIZED AS A RESULT OF THIS OCCURRENCE? ☒ YES ☐ NO

39. IF THE SUBJECT WERE ALREADY ON THE SICK LIST FOR OTHER REASONS AT TIME OF INJURY WOULD THIS INJURY IN ITSELF HAVE REQUIRED HOSPITALIZATION? ☒ YES ☐ NO ☐ NOT APPLICABLE

40. IT IS POSSIBLE THAT THE FOLLOWING DISABILITY MAY RESULT: ☒ PERMANENT PARTIAL ☐ PERMANENT TOTAL

41. DATE OF EXPIRATION OF ENLISTMENT/TERM OF OBLIGATED SERVICE: 1 July 1973

42. IF DECEASED, WAS AUTOPSY CONDUCTED? NA ☐ YES ☐ NO IF YES, ATTACH COPY OF AUTOPSY PROTOCOL

43. ADDITIONAL INFORMATION FOR RESERVISTS: IF RESERVIST WAS ENGAGED IN ACTIVE-DUTY TRAINING OR INACTIVE DUTY (DRILL) SUPPLY THE FOLLOWING INFORMATION:

| MEMBER REPORTED FOR DUTY OR DRILL | | DISMISSED FROM DUTY OR DRILL | | INJURY | |
|---|---|---|---|---|---|
| DATE | TIME | DATE | TIME | DATE | TIME |
| NA | | | | | |

| | | |
|---|---|---|
| 44. MEDICAL OFFICER'S SIGNATURE | 45. GRADE<br>LT, MC, USNR | 46. DATE<br>4 June 1973 |

47. IT IS THE OPINION OF THE UNDERSIGNED THAT THE INJURY/DEATH IN QUESTION WAS INCURRED IN THE LINE OF DUTY AND NOT AS THE RESULT OF THE SUBJECT MAN'S OWN MISCONDUCT. ☒ YES ☐ NO

COMMANDING OFFICER (OR ONE AUTHORIZED TO SIGN BY HIS DIRECTION - IF LATTER SO INDICATE)

| | | |
|---|---|---|
| 48. SIGNATURE<br>J N Meyers | 49. TYPED NAME AND GRADE<br>J. N. MEYERS, CAPT, USN | 50. DATE<br>4 June 1973 |

51. ACTION OF OFFICER EXERCISING GENERAL COURT-MARTIAL JURISDICTION:

DATE: 10 June 1973

FROM: Commander U. S. Naval Forces, Philippines

TO: JUDGE ADVOCATE GENERAL OF THE NAVY

Injuries sustained by PERKINS were incurred in the line of duty and not as a result of PERKINS' own misconduct

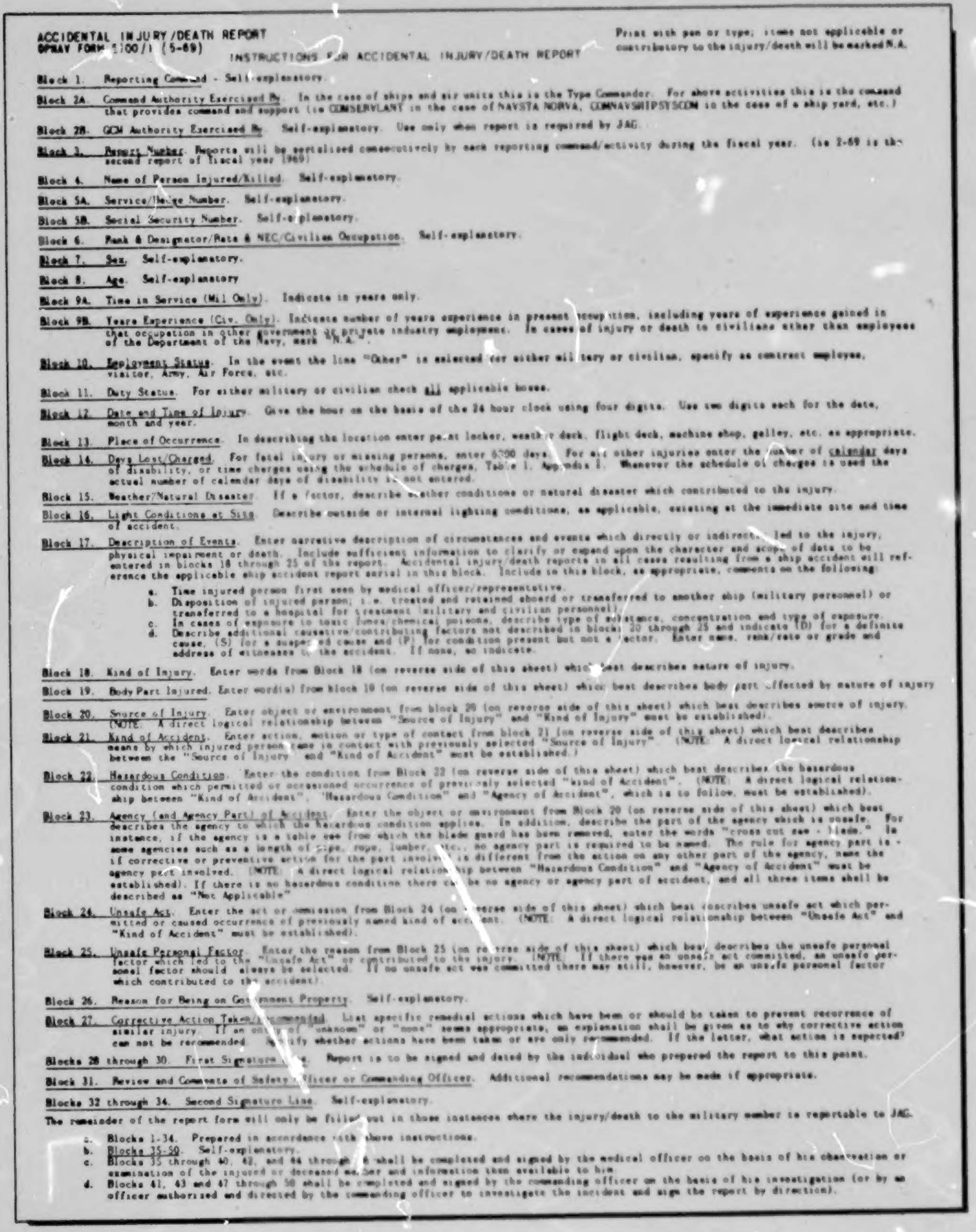
J W Robertson

SIGNATURE AND TYPED NAME OF OFFICER EXERCISING GCM AUTHORITY (OR ONE AUTHORIZED TO SIGN BY DIRECTION)

J. W. ROBERTSON, CDR, USN
Chief of Staff

192.92.2

Figure 12-5.—Accidental Injury/Death Report—(Continued).



ACCIDENTAL INJURY/DEATH REPORT
OPNAV FORM 5100/1 (5-69)

Print with pen or type; items not applicable or contributory to the injury/death will be marked N.A.

INSTRUCTIONS FOR ACCIDENTAL INJURY/DEATH REPORT

Block 1. Reporting Command - Self-explanatory.

Block 2A. Command Authority Exercised By. In the case of ships and air units this is the Type Commander. For shore activities this is the command that provides command and support (ie COMSERVLANT in the case of NAVSTA NORVA, COMNAVSHIPSYSCOM in the case of a ship yard, etc.)

Block 2B. GCM Authority Exercised By. Self-explanatory. Use only when report is required by JAG.

Block 3. Report Number. Reports will be serialized consecutively by each reporting command/activity during the fiscal year. (ie 2-69 is the second report of fiscal year 1969)

Block 4. Name of Person Injured/Killed. Self-explanatory.

Block 5A. Service/Badge Number. Self-explanatory.

Block 5B. Social Security Number. Self-explanatory.

Block 6. Rank & Designator/Rate & NEC/Civilian Occupation. Self-explanatory.

Block 7. Sex. Self-explanatory.

Block 8. Age. Self-explanatory

Block 9A. Time in Service (Mil Only). Indicate in years only.

Block 9B. Years Experience (Civ. Only). Indicate number of years experience in present occupation, including years of experience gained in that occupation in other government or private industry employment. In cases of injury or death to civilians other than employees of the Department of the Navy, mark "N.A.".

Block 10. Employment Status. In the event the line "Other" is selected for either military or civilian, specify as contract employee, visitor, Army, Air Force, etc.

Block 11. Duty Status. For either military or civilian check all applicable boxes.

Block 12. Date and Time of Injury. Give the hour on the basis of the 24 hour clock using four digits. Use two digits each for the date, month and year.

Block 13. Place of Occurrence. In describing the location enter paint locker, weather deck, flight deck, machine shop, galley, etc. as appropriate.

Block 14. Days Lost/Charged. For fatal injury or missing persons, enter 6000 days. For all other injuries enter the number of calendar days of disability, or time charges using the schedule of charges, Table 1, Appendix I. Whenever the schedule of charges is used the actual number of calendar days of disability is not entered.

Block 15. Weather/Natural Disaster. If a factor, describe weather conditions or natural disaster which contributed to the injury.

Block 16. Light Conditions at Site. Describe outside or internal lighting conditions, as applicable, existing at the immediate site and time of accident.

Block 17. Description of Events. Enter narrative description of circumstances and events which directly or indirectly led to the injury, physical impairment or death. Include sufficient information to clarify or expand upon the character and scope of data to be entered in blocks 18 through 25 of the report. Accidental injury/death reports in all cases resulting from a ship accident will reference the applicable ship accident report serial in this block. Include in this block, as appropriate, comments on the following:

- a. Time injured person first seen by medical officer/representative.
- b. Disposition of injured person; i.e. treated and retained aboard or transferred to another ship (military personnel) or transferred to a hospital for treatment (military and civilian personnel).
- c. In cases of exposure to toxic fumes/chemical poisons, describe type of substance, concentration and type of exposure.
- d. Describe additional causative/contributing factors not described in blocks 20 through 25 and indicate (D) for a definite cause, (S) for a suspected cause and (P) for condition present but not a factor. Enter name, rank/rate or grade and address of witnesses to the accident. If none, so indicate.

Block 18. Kind of Injury. Enter words from Block 18 (on reverse side of this sheet) which best describes nature of injury.

Block 19. Body Part Injured. Enter word(s) from block 19 (on reverse side of this sheet) which best describes body part affected by nature of injury

Block 20. Source of Injury. Enter object or environment from block 20 (on reverse side of this sheet) which best describes source of injury. (NOTE: A direct logical relationship between "Source of Injury" and "Kind of Injury" must be established).

Block 21. Kind of Accident. Enter action, motion or type of contact from block 21 (on reverse side of this sheet) which best describes means by which injured person came in contact with previously selected "Source of Injury". (NOTE: A direct logical relationship between the "Source of Injury" and "Kind of Accident" must be established.)

Block 22. Hazardous Condition. Enter the condition from Block 22 (on reverse side of this sheet) which best describes the hazardous condition which permitted or occasioned occurrence of previously selected "Kind of Accident". (NOTE: A direct logical relationship between "Kind of Accident", "Hazardous Condition" and "Agency of Accident", which is to follow, must be established).

Block 23. Agency (and Agency Part) of Accident. Enter the object or environment from Block 20 (on reverse side of this sheet) which best describes the agency to which the hazardous condition applies. In addition, describe the part of the agency which is unsafe. For instance, if the agency is a table saw from which the blade guard has been removed, enter the words "cross cut saw - blade." In some agencies such as a length of pipe, rope, lumber, etc., no agency part is required to be named. The rule for agency part is - if corrective or preventive action for the part involved is different from the action on any other part of the agency, name the agency part involved. (NOTE: A direct logical relationship between "Hazardous Condition" and "Agency of Accident" must be established). If there is no hazardous condition there can be no agency or agency part of accident, and all three items shall be described as "Not Applicable"

Block 24. Unsafe Act. Enter the act or ommission from Block 24 (on reverse side of this sheet) which best describes unsafe act which permitted or caused occurrence of previously named kind of accident. (NOTE: A direct logical relationship between "Unsafe Act" and "Kind of Accident" must be established).

Block 25. Unsafe Personal Factor. Enter the reason from Block 25 (on reverse side of this sheet) which best describes the unsafe personal factor which led to the "Unsafe Act" or contributed to the injury. (NOTE: If there was an unsafe act committed, an unsafe personal factor should always be selected. If no unsafe act was committed there may still, however, be an unsafe personal factor which contributed to the accident).

Block 26. Reason for Being on Government Property. Self-explanatory.

Block 27. Corrective Action Taken/Recommended. List specific remedial actions which have been or should be taken to prevent recurrence of similar injury. If an entry of "unknown" or "none" seems appropriate, an explanation shall be given as to why corrective action can not be recommended. Specify whether actions have been taken or are only recommended. If the latter, what action is expected?

Blocks 28 through 30. First Signature Line. Report is to be signed and dated by the individual who prepared the report to this point.

Block 31. Review and Comments of Safety Officer or Commanding Officer. Additional recommendations may be made if appropriate.

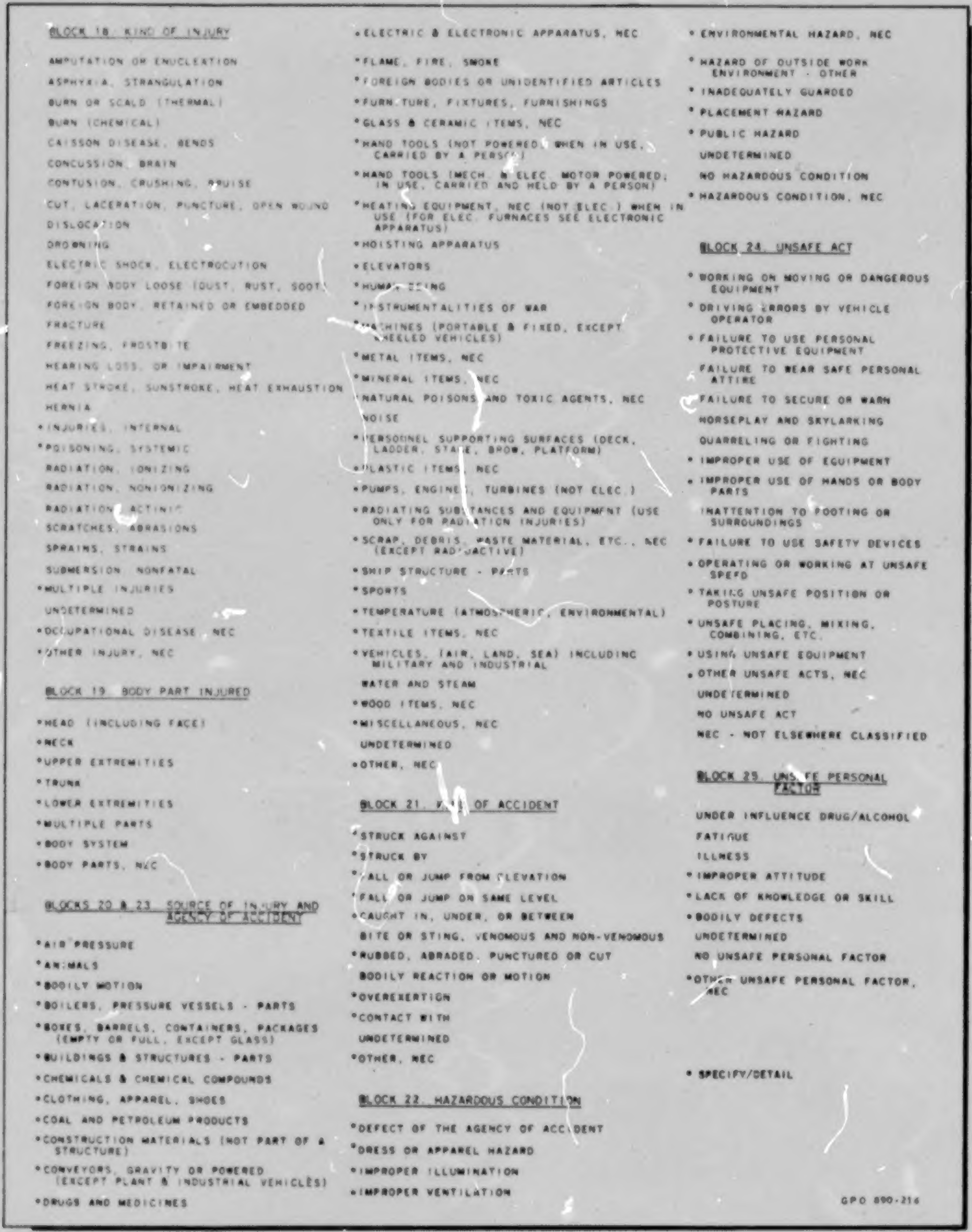
Blocks 32 through 34. Second Signature Line. Self-explanatory.

The remainder of the report form will only be filled out in those instances where the injury/death to the military member is reportable to JAG.

- a. Blocks 1-34. Prepared in accordance with above instructions.
- b. Blocks 35-50. Self-explanatory.
- c. Blocks 35 through 40, 42, and 44 through 46 shall be completed and signed by the medical officer on the basis of his observation or examination of the injured or deceased member and information then available to him.
- d. Blocks 41, 43 and 47 through 50 shall be completed and signed by the commanding officer on the basis of his investigation (or by an officer authorized and directed by the commanding officer to investigate the incident and sign the report by direction).

192.92.3

Figure 12-5.–Accidental Injury/Death Report–(Continued).



### BLOCK 18. KIND OF INJURY

AMPUTATION OR ENUCLEATION
ASPHYXIA, STRANGULATION
BURN OR SCALD (THERMAL)
BURN (CHEMICAL)
CAISSON DISEASE, BENDS
CONCUSSION, BRAIN
CONTUSION, CRUSHING, BRUISE
CUT, LACERATION, PUNCTURE, OPEN WOUND
DISLOCATION
DROWNING
ELECTRIC SHOCK, ELECTROCUTION
FOREIGN BODY LOOSE (DUST, RUST, SOOT)
FOREIGN BODY, RETAINED OR EMBEDDED
FRACTURE
FREEZING, FROSTBITE
HEARING LOSS, OR IMPAIRMENT
HEAT STROKE, SUNSTROKE, HEAT EXHAUSTION
HERNIA
•INJURIES, INTERNAL
•POISONING, SYSTEMIC
RADIATION, IONIZING
RADIATION, NONIONIZING
RADIATION, ACTINIC
SCRATCHES, ABRASIONS
SPRAINS, STRAINS
SUBMERSION, NONFATAL
•MULTIPLE INJURIES
UNDETERMINED
•OCCUPATIONAL DISEASE, NEC
•OTHER INJURY, NEC

### BLOCK 19. BODY PART INJURED

•HEAD (INCLUDING FACE)
•NECK
•UPPER EXTREMITIES
•TRUNK
•LOWER EXTREMITIES
•MULTIPLE PARTS
•BODY SYSTEM
•BODY PARTS, NEC

### BLOCKS 20 & 23. SOURCE OF INJURY AND AGENCY OF ACCIDENT

•AIR PRESSURE
•ANIMALS
•BODILY MOTION
•BOILERS, PRESSURE VESSELS - PARTS
•BOXES, BARRELS, CONTAINERS, PACKAGES (EMPTY OR FULL, EXCEPT GLASS)
•BUILDINGS & STRUCTURES - PARTS
•CHEMICALS & CHEMICAL COMPOUNDS
•CLOTHING, APPAREL, SHOES
•COAL AND PETROLEUM PRODUCTS
•CONSTRUCTION MATERIALS (NOT PART OF A STRUCTURE)
•CONVEYORS, GRAVITY OR POWERED (EXCEPT PLANT & INDUSTRIAL VEHICLES)
•DRUGS AND MEDICINES
•ELECTRIC & ELECTRONIC APPARATUS, NEC
•FLAME, FIRE, SMOKE
•FOREIGN BODIES OR UNIDENTIFIED ARTICLES
•FURNITURE, FIXTURES, FURNISHINGS
•GLASS & CERAMIC ITEMS, NEC
•HAND TOOLS (NOT POWERED) WHEN IN USE, CARRIED BY A PERSON)
•HAND TOOLS (MECH. & ELEC. MOTOR POWERED; IN USE, CARRIED AND HELD BY A PERSON)
•HEATING EQUIPMENT, NEC (NOT ELEC.) WHEN IN USE (FOR ELEC. FURNACES SEE ELECTRONIC APPARATUS)
•HOISTING APPARATUS
•ELEVATORS
•HUMAN BEING
•INSTRUMENTALITIES OF WAR
•MACHINES (PORTABLE & FIXED, EXCEPT WHEELED VEHICLES)
•METAL ITEMS, NEC
•MINERAL ITEMS, NEC
•NATURAL POISONS AND TOXIC AGENTS, NEC
NOISE
•PERSONNEL SUPPORTING SURFACES (DECK, LADDER, STAGE, BROW, PLATFORM)
•PLASTIC ITEMS, NEC
•PUMPS, ENGINES, TURBINES (NOT ELEC.)
•RADIATING SUBSTANCES AND EQUIPMENT (USE ONLY FOR RADIATION INJURIES)
•SCRAP, DEBRIS, WASTE MATERIAL, ETC., NEC (EXCEPT RADIOACTIVE)
•SHIP STRUCTURE - PARTS
•SPORTS
•TEMPERATURE (ATMOSPHERIC, ENVIRONMENTAL)
•TEXTILE ITEMS, NEC
•VEHICLES, (AIR, LAND, SEA) INCLUDING MILITARY AND INDUSTRIAL
WATER AND STEAM
•WOOD ITEMS, NEC
•MISCELLANEOUS, NEC
UNDETERMINED
•OTHER, NEC

### BLOCK 21. TYPE OF ACCIDENT

•STRUCK AGAINST
•STRUCK BY
•FALL OR JUMP FROM ELEVATION
•FALL OR JUMP ON SAME LEVEL
•CAUGHT IN, UNDER, OR BETWEEN
BITE OR STING, VENOMOUS AND NON-VENOMOUS
•RUBBED, ABRADED, PUNCTURED OR CUT
BODILY REACTION OR MOTION
•OVEREXERTION
•CONTACT WITH
UNDETERMINED
•OTHER, NEC

### BLOCK 22. HAZARDOUS CONDITION

•DEFECT OF THE AGENCY OF ACCIDENT
•DRESS OR APPAREL HAZARD
•IMPROPER ILLUMINATION
•IMPROPER VENTILATION
•ENVIRONMENTAL HAZARD, NEC
•HAZARD OF OUTSIDE WORK ENVIRONMENT - OTHER
•INADEQUATELY GUARDED
•PLACEMENT HAZARD
•PUBLIC HAZARD
UNDETERMINED
NO HAZARDOUS CONDITION
•HAZARDOUS CONDITION, NEC

### BLOCK 24. UNSAFE ACT

•WORKING ON MOVING OR DANGEROUS EQUIPMENT
•DRIVING ERRORS BY VEHICLE OPERATOR
•FAILURE TO USE PERSONAL PROTECTIVE EQUIPMENT
FAILURE TO WEAR SAFE PERSONAL ATTIRE
FAILURE TO SECURE OR WARN
HORSEPLAY AND SKYLARKING
QUARRELING OR FIGHTING
•IMPROPER USE OF EQUIPMENT
•IMPROPER USE OF HANDS OR BODY PARTS
INATTENTION TO FOOTING OR SURROUNDINGS
•FAILURE TO USE SAFETY DEVICES
•OPERATING OR WORKING AT UNSAFE SPEED
•TAKING UNSAFE POSITION OR POSTURE
•UNSAFE PLACING, MIXING, COMBINING, ETC.
•USING UNSAFE EQUIPMENT
•OTHER UNSAFE ACTS, NEC
UNDETERMINED
NO UNSAFE ACT
NEC - NOT ELSEWHERE CLASSIFIED

### BLOCK 25. UNSAFE PERSONAL FACTOR

UNDER INFLUENCE DRUG/ALCOHOL
FATIGUE
ILLNESS
•IMPROPER ATTITUDE
•LACK OF KNOWLEDGE OR SKILL
•BODILY DEFECTS
UNDETERMINED
NO UNSAFE PERSONAL FACTOR
•OTHER UNSAFE PERSONAL FACTOR, NEC

• SPECIFY/DETAIL

GPO 890-216

192.92.4

Figure 12-5.—Accidental Injury/Death Report—(Continued).

Any disciplinary action is taken independently of such determination. In fact, a favorable finding doesn't always mean that disciplinary action won't be taken.

## MISCONDUCT

Ordinary negligence or carelessness is not misconduct. Misconduct means intentionally wrongful conduct or gross negligence. Even when an act violates a regulation or order, it does not mean that the act in question automatically involves misconduct. To support a fact-finding body's opinion of misconduct, the wrongful conduct must be found to have been a proximate cause of the injury or disease (i.e., the misconduct must have directly caused injury, etc., that otherwise would not have occurred). Furthermore, the wrongful conduct must be such that it could have been reasonably forseen that injury, or disease might result. If the injury or disease was caused by something not reasonably forseeable at the time the act of apparent misconduct was committed, the act may not be considered as a proximate cause of the injury or disease.

Conjecture, guesswork, or inference is not enough for a finding of misconduct. Until found otherwise, it is always presumed that injury or disease is not the result of misconduct. There must be clear and convincing evidence that the injury or disease is the proximate result of the person's misconduct.

Thus, in summary, injury or disease, in order to support an opinion of misconduct, must:

- Be intentionally incurred by wrongful conduct or result from gross negligence.
- Be the proximate result of the member's action.
- Have been reasonably foreseeable as the result of the act.

## LINE OF DUTY

Whether or not misconduct is involved becomes an integral part of the line of duty determination. For instance, if it is found that misconduct is involved, the act cannot have been committed in the line of duty. Conversely, if the investigating body gives as its opinion that a particular act was done in the line of duty, it may not at the same time say that misconduct was involved.

An act may be done not in the line of duty, but not necessarily as a result of misconduct. If a man is innocently injured in a traffic accident ashore, for instance, after having been on unauthorized absence for several days, the finding would probably be not in line of duty (since he was on unauthorized absence which exceeded 24 hours), but not due to own misconduct (since the injury was certainly not intentional or through gross negligence.)

The determination is always not in line of duty if the injury or disease is found to have been incurred:

- As a result of misconduct.
- While avoiding duty by deserting the service; or while absent without leave and such absence materially interfered with the performance of required military duties; there is a rebuttable presumption for or against such material interference dependent on whether the unauthorized absence exceeded 24 hours or not, respectively. Note: the element of material interference is inapplicable in regard to physical disability separation and retirement benefits so that a disability incurred during desertion or unauthorized absence of any duration will result in ineligibility for those benefits.
- While confined under sentence of GCM involving an unremitted dishonorable discharge.
- While confined under sentence of civil court following conviction of a felony.

## DETERMINATIONS WHICH MAY BE MADE

"Misconduct" can never be "in line of duty." Hence, a finding or determination that an injury was incurred as a result of the member's own misconduct must be accompanied by a finding or determination that the member's injury was incurred "not in line of duty." It is permissable however, to find that an injury was incurred "not as a result of misconduct" and "not in line of duty." As an example, a member who is absent without authority may be injured by a felonious assault or struck by a vehicle driven by a drunken driver. Obviously, the injury was incurred through no fault of the member, but if the absence materially interfered with the performance of his required military duties a finding of "not in line of duty" must result. The three possible combinations of findings are as follows:

- "In line of duty" and "not due to the member's own misconduct";
- "Not in line of duty" and "not due to the member's own misconduct"; or
- "Not in line of duty" and "due to the member's own misconduct."

## MENTAL RESPONSIBILITY

The general rule is that a member may not be held responsible for his acts and their forseeable consequences if, as the result of mental defect, disease, or derangement, he was unable to comprehend the nature of his acts or to control his actions. Additionally, a member may not be held responsible for his acts or their forseeable consequences if, as the result of a mental condition not amounting to a defect, disease, or derangement and *not itself* the result of prior misconduct, he was unable to comprehend the nature of his acts and to control his actions. Thus, an injury which was the proximate result of acts performed while the member injured was suffering impairment of his mental facilities as the result of voluntary ingestion of a hallucinogenic drug would be deemed to have been incurred as the result of the member's own misconduct. Certain properties of such drugs are notorious and their use is prohibited by Article 0731, *U.S. Navy Regulations*; hence the impairment would support a finding of misconduct.

In the absence of evidence to the contrary, there is a presumption that all members are mentally responsible for their acts. This presumption makes it unnecessary in the majority of cases for a fact-finding body to seek evidence that a member was mentally responsible at a certain time unless credible evidence is developed or discovered tending to indicate that he was not mentally responsible at that time. This evidence may consist of circumstances attending the acts; evidence of previous abnormal, irrational, or aberrant behavior; expert opinion evidence of mental illness; or other evidence directly or indirectly tending to indicate lack of mental responsibility. If the question of mental responsibility of a member is raised by the facts developed or by the nature of the incident, the presumption of mental responsibility ceases to exist. In such cases the preponderance of information in the investigation must clearly establish the member's mental responsibility before a determination that an injury or disease was incurred as a result of the member's own misconduct may be made.

## SELF-INFLICTED INJURIES OR SUICIDAL GESTURES

In view of the strong human instinct for self-preservation, a bona fide suicide attempt, as distinguished from other acts of intentional self-injury, is considered to create a strong inference of lack of mental responsibility. Investigation of a bona fide suicide attempt should include, where warranted, expert psychiatric evaluation of the member. If there is no reasonable motive for suicide supplied by the evidence, the suicide attempt is sufficient to rebut the presumption of mental responsibility. This means that the determination of whether the attempt was misconduct must be based upon other evidence.

Intentional self-inflicted injury, not prompted by a serious suicidal intent, is at most a suicidal gesture and injuries of this sort are deemed to be incurred as the result of the member's own misconduct, unless lack of mental responsibility is otherwise shown.

## DEATH OR SUICIDE

In all cases of death, a fact-finding body does not express opinions concerning the misconduct or line of duty status of an individual in the report of investigation of his death or in any endorsement thereon. However, eligibility for payment of certain Federal benefits that may be due survivors is determined by the Veterans Administration on the basis of conclusions derived from the facts contained in the investigative report.

In all cases of suicide or attempted suicide, all possible evidence bearing on the mental condition of the deceased or injured person must be obtained. This should include all available evidence as to his social background, his actions and moods immediately prior to the suicide or the suicide attempt, any troubles which might have motivated the incident, and any pertinent examination by psychiatrists or counseling by specially experienced persons.

## AUTOMOBILE CASUALTIES

If the investigation involves any motor vehicle accident, certain items of information must be covered in the investigative report. Such things as the speed of the vehicles involved, road factors, traffic conditions, light and weather conditions, and the mechanical condition of the vehicles involved must be covered. Again, when investigating this type incident, you should refer to Chapter IX of the *JAG Manual* for a listing of specific items which you should cover during the investigation.

## REGULATIONS APPLICABLE

The primary source of regulations concerning fact-finding bodies is the *Manual of the Judge Advocate General*, JAGINST 5800.7 series. You should familiarize yourself with the contents of Chapters II through VI and VIII through X, particularly as they refer to requirements for making up lost time (due to member's own misconduct), loss of pay because of intemperate use of alcohol or habit-forming drugs, disability benefits pertaining to reserves, and the correction of naval records and review of discharges.

Further information and implementing regulations may be found in the following sources for the items listed:

- Lost time due to own misconduct—*Bureau of Naval Personnel Manual*, Article 3840180.
- Forfeiture of pay, intemperate use of alcohol or drugs—*DOD Military Pay and Entitlements Manual*.
- Disability retirements and severance pay—*Disability Separation Manual* (NAVEXOS P-1990).
- Correction of naval records and review of discharges—*Bureau of Naval Personnel Manual*, Article 5040200.

## CHAPTER 13

# CLAIMS

A significant portion of your duties as a Legalman will entail the investigation and processing of claims. A claim normally refers to a written demand for the payment of a specified sum of money, other than the ordinary obligations incurred for services, supplies, or equipment. Claims that will be of particular interest to you fall into two broad categories; those made against the Government and those made for or on behalf of the Government. Potential claimants against the Government include the following: individuals, associations, partnerships, corporations, or political entities. So that you will be thoroughly familiar with the duties of a Legalman in the claims area, this chapter discusses in detail:

(1) The statutory authorities under which claims arise and are settled.
(2) The parties (including the U.S. Government) entitled to assert claims.
(3) The specific occurrences that constitute and give rise to claims, including precise definitions of claims that arise under each statutory provision.
(4) The general procedures for the investigation and processing of claims and those specialized procedures which are peculiar to the various enactments that authorize the assertion of claims.

## FEDERAL TORT CLAIMS

Federal Tort Claims consist of claims against the United States based on death, personal injury, damage to or loss of property, caused by negligent or wrongful acts or omissions of military personnel or civilian employees of the Government while acting within the scope of their employment (as determined by State law) under circumstances in which the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occured.

### STATUTORY AUTHORITY

The Federal Tort Claims Act 28USC 1346(b) (2671-2680) is the statutory authority which enunciates the scope of acts or omissions of the employees of the Government, including military personnel, that constitute valid tort claims against the United States. The Act is the only statute, discussed in this chapter, by which the Government has waived its immunity from suit. (Generally under the doctrine of Sovereign Immunity, suit cannot be brought against the Government because it is considered the absolute and uncontrollable power by which an independent state is governed. The Government may, of course, through legislative enactment, permit suit against itself as it has done in the Federal Tort Claims Act. This right is limited to certain cases of tortious conduct.)

The Act does not completely waive sovereign immunity for torts committed by Government employees within the scope of their employment; that is, there are certain claims which cannot be brought under the Act. The most important of these exclusions are: Admiralty claims; claims by military personnel for injuries "incident to service;" claims by Federal civilian employees for injuries incurred within the scope of their employment; claims arising in a foreign country; claims arising out of assault, battery, false imprisonment, false arrest, libel, and slander; and, because the Act requires a finding of negligence, also excluded are claims based solely on a promise or agreement (contract claims) and claims based solely on the legal principle of "strict liability," which imposes liability in certain cases without a finding of negligence, (e.g., when the damage was caused by an unusually dangerous activity).

### Administrative Claims

In many respects, a claimant may bring a suit against the United States Under the Act in much the same way as he would sue a private person for personal injury. One important difference is that the claimant must first file an administrative claim with the appropriate Government agency before suing in court under the Federal Tort Claims Act. Furthermore, the claimant must then wait six months, or until the claim is finally denied, before suing in court. If the claim is finally denied, suit must be filed within six months.

A claimant may not institute a court action for an amount in excess of the amount of the administrative claim unless the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of the initial filing of the claim or upon allegation and proof of intervening facts relating to the amount of the claim.

The administrative claim must be filed within two years after the injury occurred (or in some cases, after it was discovered).

### Jurisdiction

Suit can only be brought in a federal district court; e.g., if the claimant sues in a state court, the suit can be dismissed or removed to the federal district court, depending on the facts of the case.

## PAYMENT OF FEDERAL TORT CLAIMS

A claim under this Act is considered as having been presented when the Navy receives from the claimant an executed Standard Form 95 (Claim for Damage or Injury) or other written notice of the claim. The Standard Form 95 or other written notice must demand a definite sum in money damages and must be signed by the claimant or his representative. To expedite the claim, a Standard Form 95 should be filled out completely. Evidence in the possession of the claimant which may have a bearing on either the responsibility of the United States for the death, personal injury or injury to or loss of property, or the damages claimed, may also be required for submission to expedite processing, investigation and final disposition of the claim.

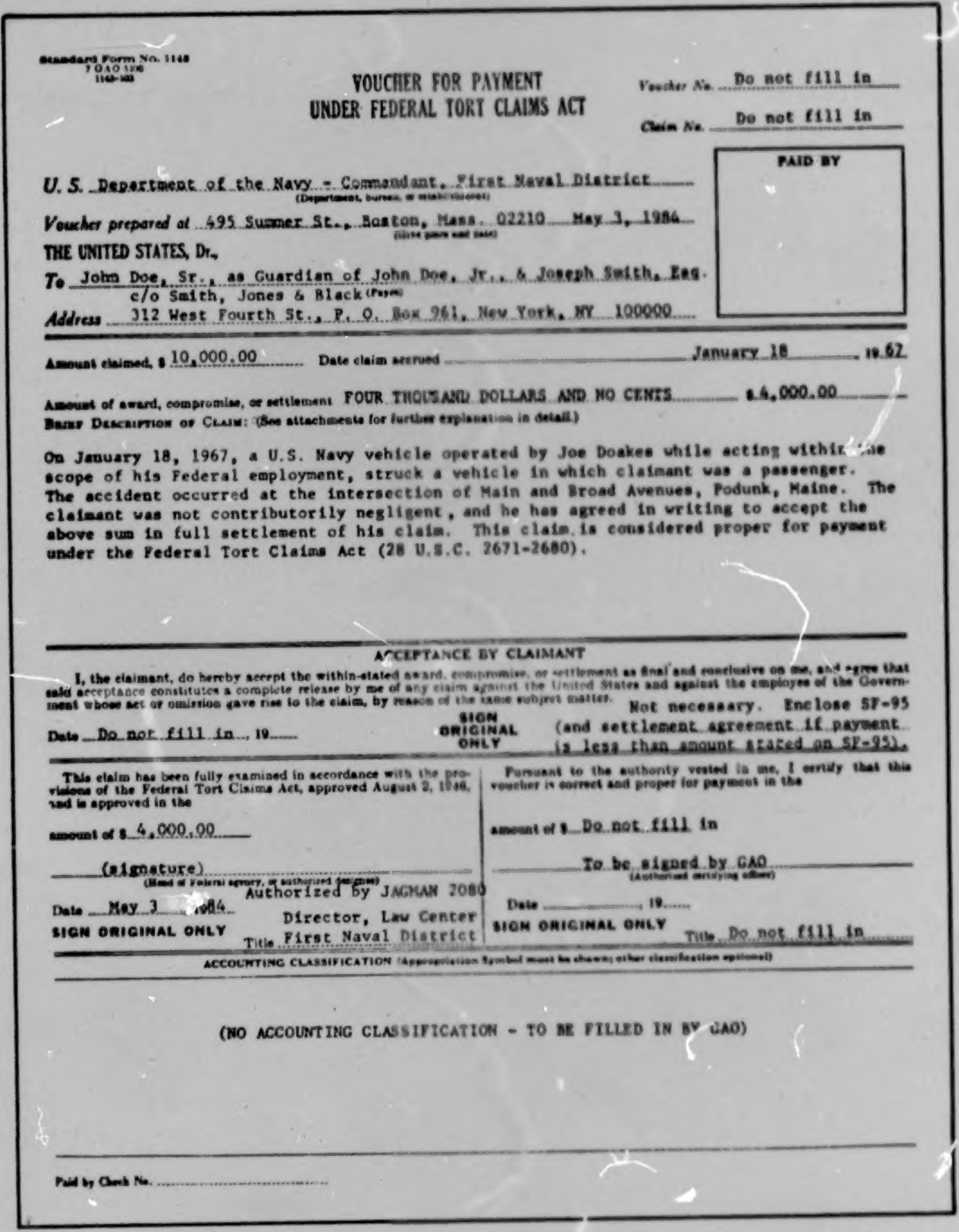
A final denial of a claim under the Act will produce the right to petition for administrative reconsideration by the Navy. Such a request must be initiated before expiration of a six-months period commencing on the date of final denial.

Procedures for payment of claims receiving final approval will vary in relation to the amount resolved as due under the claim. Any award, compromise, or settlement in the amount of $2500 or less must be forwarded to such disbursing officer as may be designated by the Comptroller General of the Navy for payment from appropriations designated for that purpose. Payment of an award of $2500 and not more than $100,000 must be obtained by the Navy by forwarding Standard Form 1145 (Voucher For Payment Under Federal Tort Claims Act) (see fig. 13-1) to the Claims Division, General Accounting Office. Payment of an award in excess of $100,000 must be obtained by the Navy by forwarding Standard Form 1145 to the Bureau of Accounts, Department of the Treasury, which is responsible for forwarding same to the Office of Management and Budget for inclusion in a deficiency appropriation bill.

The procedures detailed above are peculiar to Federal Tort Claims and are to be applied in conjunction with the General Claims Provisions which are covered later in this chapter. The essential steps necessary for the submission, processing and investigation of a claim are elaborated in detail below.

### Who May File?

The below listed sub-topics cover the range of injured claimants, who qualify as "proper claim-



Standard Form No. 1145
[illegible]

VOUCHER FOR PAYMENT
UNDER FEDERAL TORT CLAIMS ACT

*Voucher No.* Do not fill in

*Claim No.* Do not fill in

PAID BY

*U. S.* Department of the Navy - Commandant, First Naval District
(Department, bureau, or establishment)

*Voucher prepared at* 495 Summer St., Boston, Mass. 02210 May 3, 1984
(Give place and date)

THE UNITED STATES, Dr.,

*To* John Doe, Sr., as Guardian of John Doe, Jr., & Joseph Smith, Esq.
c/o Smith, Jones & Black (Payee)

*Address* 312 West Fourth St., P. O. Box 961, New York, NY 100000

Amount claimed, $ 10,000.00 Date claim accrued January 18 19 67

Amount of award, compromise, or settlement FOUR THOUSAND DOLLARS AND NO CENTS $ 4,000.00

BRIEF DESCRIPTION OF CLAIM: (See attachments for further explanation in detail.)

On January 18, 1967, a U.S. Navy vehicle operated by Joe Doakes while acting within the scope of his Federal employment, struck a vehicle in which claimant was a passenger. The accident occurred at the intersection of Main and Broad Avenues, Podunk, Maine. The claimant was not contributorily negligent, and he has agreed in writing to accept the above sum in full settlement of his claim. This claim is considered proper for payment under the Federal Tort Claims Act (28 U.S.C. 2671-2680).

ACCEPTANCE BY CLAIMANT

I, the claimant, do hereby accept the within-stated award, compromise, or settlement as final and conclusive on me, and agree that said acceptance constitutes a complete release by me of any claim against the United States and against the employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

Date Do not fill in, 19

SIGN ORIGINAL ONLY

Not necessary. Enclose SF-95 (and settlement agreement if payment is less than amount stated on SF-95).

This claim has been fully examined in accordance with the provisions of the Federal Tort Claims Act, approved August 2, 1946, and is approved in the

amount of $ 4,000.00

(signature)
(Head of Federal agency, or authorized designee)

Authorized by JAGMAN 2080

Date May 3 1984

SIGN ORIGINAL ONLY

Director, Law Center
Title First Naval District

Pursuant to the authority vested in me, I certify that this voucher is correct and proper for payment in the

amount of $ Do not fill in

To be signed by GAO
(Authorized certifying officer)

Date , 19

SIGN ORIGINAL ONLY

Title Do not fill in

ACCOUNTING CLASSIFICATION (Appropriation Symbol must be shown; other classification optional)

(NO ACCOUNTING CLASSIFICATION - TO BE FILLED IN BY GAO)

Paid by Check No.

192.93

Figure 13-1.—Standard Form 1145—Voucher for Payment under Federal Tort Claims Act.

ants" entitled to submit claims, under the Federal Tort Claims Act.

PROPERTY.–A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent, or legal representative.

PERSONAL INJURY.–A claim for personal injury may be presented by the person, his duly authorized agent, or legal representative.

DEATH.–A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable state law.

LOSS COMPENSATED BY INSURER.–A claim for loss wholly compensated by an insurer with the rights of subrogee (one who succeeds to the rights of another, e.g., here the insurer takes the rights of the claimant, under the terms of the insurance contract) may be presented by the insurer. A claim for loss partially compensated by an insurer with the rights of a subrogee may be presented by the claimant or the insurer individually as their respective interests appear, or jointly.

CLAIM PRESENTED BY AGENT OR LEGAL REPRESENTATIVE.–A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

### Settlement Authority

Standard Form No. 95 becomes the settlement agreement in all those cases where the claim has been approved in its full amount. In those cases in which the claim is approved for a lesser amount than that claimed, the claimant must explicitly express *in writing* his willingness to accept such amount in full satisfaction and final settlement of the claim. With the exception of those cases of advance payment, acceptance by the claimant of any award or settlement made by the Secretary of the Navy or the Attorney General (whose prior approval must be obtained in cases of awards or settlement of $25,000 or more) is final and conclusive upon the claimant. The operative effect of acceptance is complete release by the claimant of any claim against the United States arising out of the subject matter of the claim.

## MILITARY CLAIMS

The Military Claims Act is designed to authorize the Navy to establish policies and procedures to pay compensation for some of the injuries for which the Navy could be considered responsible but for which there is no legal right to sue under the Federal Tort Claims Act.

### STATUTORY AUTHORITY

The Military Claims Act (10 USC2733) provides for settlement of claims against the Navy for death, personal injury, damage to or loss of property caused by either military personnel or civilian employees of the Navy while acting within the scope of their employment or otherwise incident to noncombat activities of the Navy, including claims for damage to or loss of or destruction by criminal acts of registered or insured mail while in the possession of the military authorities, claims for damage to or loss or destruction of personal property in the custody of the Government, and claims for damage to real property incident to use and occupancy thereof.

The Secretary of the Navy or the Judge Advocate General, subject to appeal to the Secretary of the Navy, may authorize settlement or payment in an amount not in excess of $15,000. A claim in excess of $15,000 under the Act, if considered to be meritorious by the Secretary of the Navy, which satisfies all other criteria required by the Statute may be partially paid by the Secretary and he may refer the excess to the Office of Management and Budget for submission to Congress for its consideration.

The Military Claims Act authorizes the settlement and payment of certain claims but does not authorize any right to sue the United States.

You will recall that the United States has consented to be sued in tort only under the Federal Tort Claims Act (as discussed above).

The Military Claims Act is one of two Acts under which the Secretary of the Navy or his designee is authorized to make advance payments. Payment in advance of the submission of a claim may not exceed $1000. Payment of an advance amount under this law is not an admission by the United States of liability for the accident concerned.

Claims under the Act must be submitted on Standard Form 95 (see figure 13-2).

## APPLICABILITY

As with the Federal Tort Claims Act, a proper claimant under this Act will typically be a member of the civilian community because the Act generally excludes claims by military personnel or Federal civilian employees when the injury arose incident to their service. But unlike the Tort Claims Act, some property damage claims may be paid despite the general exclusion. Claims by military personnel which are incident to their service or by civilian personnel which arise within the scope of their employment may still be considered under the Military Claims Act to the extent that the claimant has suffered property damage to which the Military Personnel and Civilian Employee's Claims Act does not apply.

The Military Claims Act is broader than the Tort Claims Act in another, more important, respect. The claimant does not have to show that the damage claimed was caused by any particular act or omission by military or civilian personnel of the Navy while acting within the scope of their employment. It is sufficient that the cause of the damage was "otherwise incident to the noncombatant activities of the Navy." Claims within this category are those arising out of authorized activities having little parallel in civilian pursuits and as a result of situations in which the Government has historically assumed broad liability, such as claims for damage to property or injury to persons which are the natural and probable consequences of maneuvers and special exercises; practice firing of heavy guns; practice bombing; naval exhibitions; operations of missiles, aircraft and antiaircraft equipment; sonic booms; use of barrage balloons; use of instrumentatilities having latent mechanical defects not traceable to negligent acts or omissions; explosions of ammunition; movement of combat vehicles or other vehicles designed especially for military use; and the use and occupancy of real estate.

## CLAIMS ARISING IN FOREIGN COUNTRY

Claims which would normally fall under the purview of the Military Claims Act because of their character but which result as a consequence of incidents occurring outside the United States, its territories, commonwealths, or possessions are not asserted under the provisions of the Military Claims Act if the pre-emption rule of the Foreign Claims Act is applicable.

### Pre-emptive Application of Foreign Claims Act

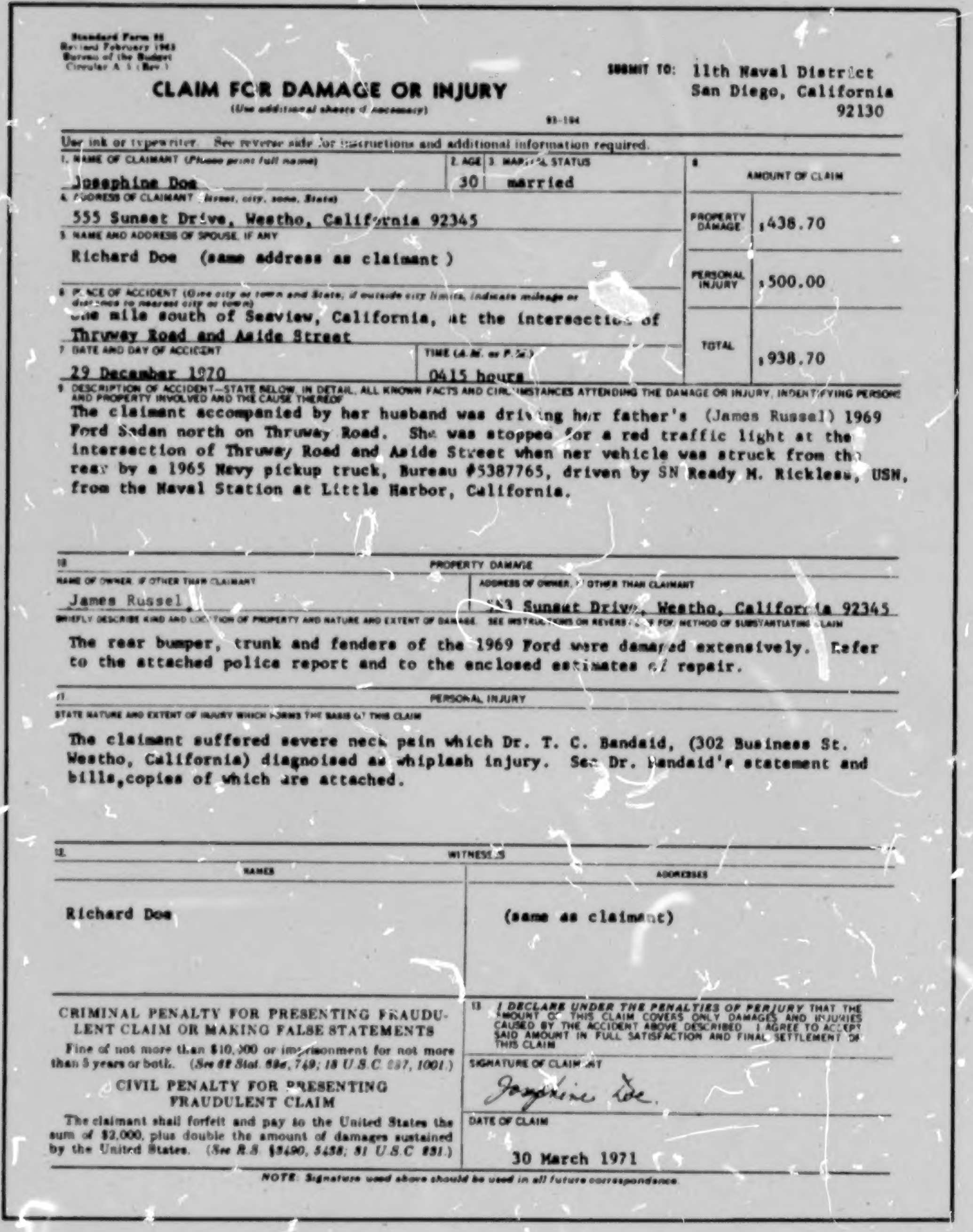
The Military Claims Act as stated is preempted in its applicability by the Foreign Claims Act (discussed later in this chapter) wherever the Foreign Claims Act is applicable. This is regardless of the fact that the Military Claims Act explicitly states that there is no geographical restriction on its application. It can be observed therefore, that if the Foreign Claims Act were repealed the Military Claims Act would be immediately operative in all locations.

### Enemy Alien

A claim by an inhabitant of a foreign country who is a national of a country at war with the United States or of any ally of such enemy country, unless it be determined that the claimant is friendly to the United States, is not payable under the terms of the Military Claims Act. Pursuant to the Foreign Military Claims Act, the Foreign Military Claims Commission or the local military commander determines whether the claimant is friendly to the United States.

## "NONSCOPE" LAW CLAIMS

There may arise against the Government claims which are not within the scope of any



Standard Form 95
Revised February 1963
Bureau of the Budget
Circular A-1 (Rev.)

**SUBMIT TO:** 11th Naval District
San Diego, California
92130

**CLAIM FOR DAMAGE OR INJURY**

*(Use additional sheets if necessary)*

93-104

Use ink or typewriter. See reverse side for instructions and additional information required.

1. NAME OF CLAIMANT *(Please print full name)*: Josephine Doe

2. AGE: 30

3. MARITAL STATUS: married

4. ADDRESS OF CLAIMANT *(Street, city, zone, State)*: 555 Sunset Drive, Westho, California 92345

5. NAME AND ADDRESS OF SPOUSE, IF ANY: Richard Doe (same address as claimant )

6. PLACE OF ACCIDENT *(Give city or town and State; if outside city limits, indicate mileage or distance to nearest city or town)*: One mile south of Seaview, California, at the intersection of Thruway Road and Aside Street

7. DATE AND DAY OF ACCIDENT: 29 December 1970

TIME (A.M. or P.M.): 0415 hours

8. AMOUNT OF CLAIM

| | |
|---|---|
| PROPERTY DAMAGE | $438.70 |
| PERSONAL INJURY | $500.00 |
| TOTAL | $938.70 |

9. DESCRIPTION OF ACCIDENT—STATE BELOW, IN DETAIL, ALL KNOWN FACTS AND CIRCUMSTANCES ATTENDING THE DAMAGE OR INJURY, INDENTIFYING PERSONS AND PROPERTY INVOLVED AND THE CAUSE THEREOF

The claimant accompanied by her husband was driving her father's (James Russel) 1969 Ford Sedan north on Thruway Road. She was stopped for a red traffic light at the intersection of Thruway Road and Aside Street when her vehicle was struck from the rear by a 1965 Navy pickup truck, Bureau #5387765, driven by SN Ready M. Rickless, USN, from the Naval Station at Little Harbor, California.

10. PROPERTY DAMAGE

NAME OF OWNER, IF OTHER THAN CLAIMANT: James Russel

ADDRESS OF OWNER, IF OTHER THAN CLAIMANT: [illegible]53 Sunset Drive, Westho, California 92345

BRIEFLY DESCRIBE KIND AND LOCATION OF PROPERTY AND NATURE AND EXTENT OF DAMAGE. SEE INSTRUCTIONS ON REVERSE SIDE FOR METHOD OF SUBSTANTIATING CLAIM

The rear bumper, trunk and fenders of the 1969 Ford were damaged extensively. Refer to the attached police report and to the enclosed estimates of repair.

11. PERSONAL INJURY

STATE NATURE AND EXTENT OF INJURY WHICH FORMS THE BASIS OF THIS CLAIM

The claimant suffered severe neck pain which Dr. T. C. Bandaid, (302 Business St. Westho, California) diagnoised as whiplash injury. See Dr. Bandaid's statement and bills,copies of which are attached.

12. WITNESSES

| NAMES | ADDRESSES |
|---|---|
| Richard Doe | (same as claimant) |

**CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS**

Fine of not more than $10,000 or imprisonment for not more than 5 years or both. *(See 62 Stat. 698, 749; 18 U.S.C. 287, 1001.)*

**CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM**

The claimant shall forfeit and pay to the United States the sum of $2,000, plus double the amount of damages sustained by the United States. *(See R.S. §3490, 5438; 31 U.S.C. 231.)*

13. *I DECLARE UNDER THE PENALTIES OF PERJURY* THAT THE AMOUNT OF THIS CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE DESCRIBED. I AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM

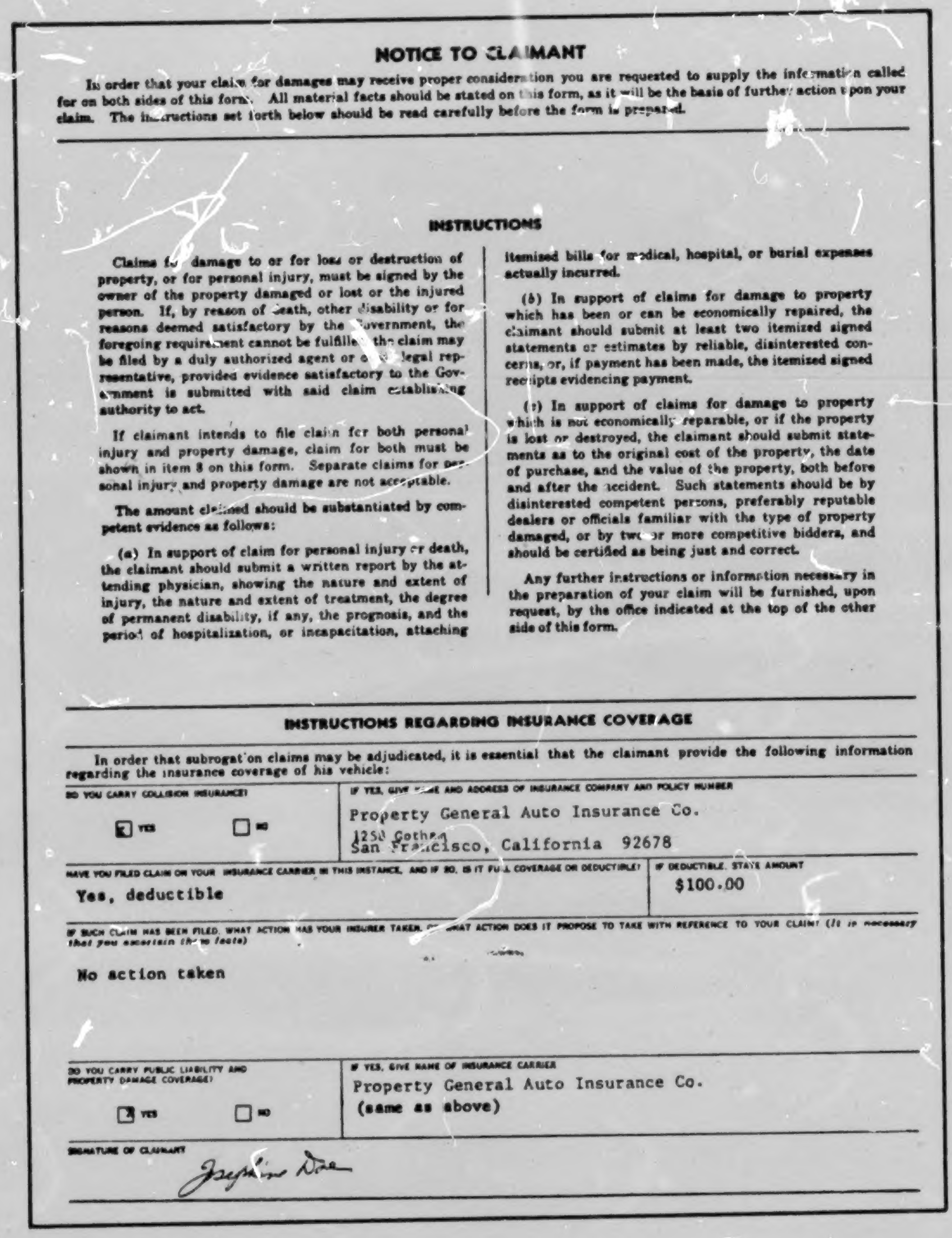
SIGNATURE OF CLAIMANT: Josephine Doe

DATE OF CLAIM: 30 March 1971

***NOTE:** Signature used above should be used in all future correspondence.*

192.94.1

Figure 13-2.—Standard Form 95—Claim for Damage or Injury.



## NOTICE TO CLAIMANT

In order that your claim for damages may receive proper consideration you are requested to supply the information called for on both sides of this form. All material facts should be stated on this form, as it will be the basis of further action upon your claim. The instructions set forth below should be read carefully before the form is prepared.

### INSTRUCTIONS

Claims for damage to or for loss or destruction of property, or for personal injury, must be signed by the owner of the property damaged or lost or the injured person. If, by reason of death, other disability or for reasons deemed satisfactory by the Government, the foregoing requirement cannot be fulfilled, the claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing authority to act.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in item 8 on this form. Separate claims for personal injury and property damage are not acceptable.

The amount claimed should be substantiated by competent evidence as follows:

(*a*) In support of claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(*b*) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(*c*) In support of claims for damage to property which is not economically reparable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

Any further instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated at the top of the other side of this form.

### INSTRUCTIONS REGARDING INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle:

DO YOU CARRY COLLISION INSURANCE? ☒ YES ☐ NO

IF YES, GIVE NAME AND ADDRESS OF INSURANCE COMPANY AND POLICY NUMBER

Property General Auto Insurance Co.
1250 Gotham
San Francisco, California 92678

HAVE YOU FILED CLAIM ON YOUR INSURANCE CARRIER IN THIS INSTANCE, AND IF SO, IS IT FULL COVERAGE OR DEDUCTIBLE?

Yes, deductible

IF DEDUCTIBLE, STATE AMOUNT

$100.00

IF SUCH CLAIM HAS BEEN FILED, WHAT ACTION HAS YOUR INSURER TAKEN, OR WHAT ACTION DOES IT PROPOSE TO TAKE WITH REFERENCE TO YOUR CLAIM? (*It is necessary that you ascertain these facts*)

No action taken

DO YOU CARRY PUBLIC LIABILITY AND PROPERTY DAMAGE COVERAGE? ☒ YES ☐ NO

IF YES, GIVE NAME OF INSURANCE CARRIER

Property General Auto Insurance Co.
(same as above)

SIGNATURE OF CLAIMANT

Josephine Doe

192.94.2

**Figure 13-2.—Standard Form 95—Claim for Damage or Injury—(Continued, Reverse).**

explicit statutory authority. A broad general statutory provision has been enacted in 10 USC 2737 to deal with the administrative processing of some of these claims sometimes referred to as "nonscope" claims. The primary characteristic of this statute is that it does not require proof that the military member or civilian employee who caused the damage was in fact acting within the scope of his employment at the time of the accident.

## STATUTORY AUTHORITY AND DEFINITIONS

The nonscope claims provision 10 USC 2737 provides authority for the administrative settlement, in an amount not to exceed $1,000 of any claim against the United States not cognizable under any other provision of law for damage to or loss of property or for personal injury or death, caused by military personnel or a civilian official or employee of the Navy incident to the use of a vehicle of the United States at any place, or incident to the use of any property of the United States on a Government installation. There is no right to sue the United States on a claim arising under the nonscope claim law 10 USC 2737 and no geographical limitation on its application.

### Civilian Official or Employee

A civilian official or employee is any civilian or employee of the Department of the Navy paid from appropriated funds at the time of the incident which resulted in the damage or loss.

### Vehicle

A vehicle includes every description of carriage or other artificial contrivance used or capable of being used as a means of transportation on land.

## WHO MAY AUTHORIZE PAYMENT

Nonscope claims may be authorized in an amount not to exceed $1000 by any of the following officers: Judge Advocate General; Deputy Judge Advocate General; Assistant Judge Advocate General; Deputy Assistant Judge Advocate General (Litigations and Claims); Head, Operational Claims and Litigation Branch; Officers in Command of Navy Law Centers; Directors of Navy Law Centers; and Claims Officers of the Navy Law Centers when specifically designated by the Officer in Command; Overseas Commands with a Judge Advocate General Corps Officer or a Judge Advocate of the Marine Corps attached.

## GENERAL CLAIMS PROVISIONS

Claims investigations and processing necessitates the expeditious and just handling of all demands submitted against the Government under the various statutory authorities allowing claims, in order that a fair and final disposition of each submission will be swiftly resolved. Similarly, your administrative handling of claims made for or on behalf of the Government should be disposed of with equal efficiency and scrupulous attention to detail so that funds expended to cover costs resulting from damages sustained by the Navy may be recovered and applied to other endeavors.

To be deemed meritorious, a claim against the Government must have a basis in a specific Congressional Enactment. Thus, the initial determination to be made when a claim is presented under a specific statute is whether the submission in fact meets the criteria of the statute and therefore constitutes a valid claim thereunder. If you can answer this threshold question in the affirmative, then the administrative process leading to final resolution has begun.

The general investigation and claims processing requirements to be followed in disposing of claims which arise under the collective statutory authorities authorizing claim settlements are set forth below. Note that where the general provisions discussed are in conflict with specific provisions peculiar to particular statutes in other parts of this chapter, the specific provisions control.

## WHO CONSTITUTES A PROPER CLAIMANT

In the four situations listed below, the requirements essential to qualification as a proper claimant are explicitly stated.

### Damage to Property Cases

A claim for damage to, loss of, or destruction of property must be presented by the owner or his duly authorized agent or legal representative. The word "owner" for purposes of determining who is a proper claimant is given a very broad application. "Owner" includes: a bailee (one to whom moveable or personal property is committed in trust), a lessee (one to whom possession of property is given under a lease agreement), mortgagor (one who having title to property pledges that property by written instrument for a particular purpose, such as security for a debt), conditional vendee (one whose purchase of a good is consummated subject to the fulfillment of a condition), but "owner" does not include a mortgagee (one who takes a mortgage from a mortgagor, e.g., a bank is a typical mortgagee), conditional vendor (one whose sale of goods is consummated subject to fulfillment of a condition) or other person having title to property solely for security purposes. If the duly authorized agent or legal representative of the owner of the property presents a claim on behalf of the owner, he must show the owner's title or capacity and the claim must be accompanied by evidence of the appointment of such person as the legal representative.

### Personal Injury Or Death Cases

A person who sustains personal injury may qualify as a proper claimant against the Navy and that party or his legal representative may present a claim for damages resulting from such injury. Where death results the legal representative of the person deceased may make a claim.

### Subrogation

Subrogation is the substitution of one person in the place of another with reference to a lawful claim, demand or right (e.g., the automobile insurance company that pays settlement to its policy holder on a collision insurance policy as a result of the damage sustained by policy holder's parked auto being struck by another vehicle, is subrogated and succeeds to the rights that the policy holder possesses against the operator of the vehicle who inflicted the damage. Such rights may include: demand for payment, right to bring suit, etc.)

Concerning claims against the Navy, the subrogor (the one who subrogates—the auto insurance policy holder in the example above) and the subrogee (the one who is subrogated—the automobile insurance company in the example above) may file a claim jointly or in separate claims. When separate claims are filed and each claim is within the power of the local authority to settle (not exceeding local monetary jurisdiction), they may be processed locally, when appropriate. This is the procedure, even if the total amount of such claims exceeds the monetary jurisdiction of the settlement authority except that as you recall from above, an award, compromise or settlement of a claim by the Navy in excess of $25,000 can be effected only with the prior approval of the Attorney General or his designee.

The subrogee to be entitled to recover from the Navy must furnish documentary evidence of a subrogated claim or proof that he has in fact the right to succeed to another's right to receive payment.

### Limitations on Transfers And Assignments

All transfers and assignments made of any claim against the United States or a transfer of any share of a claim, whether the transfer or assignment is conditional or unconditional and regardless of the consideration given to obtain the interests in the claim, are absolutely null and void.

Transfers and assignment of claims are permitted after the allowance of such claims, the ascertainment of the final amount due and the issuance of a warrant (an order by which the Navy would authorize payment of the claim submitted in a particular sum of money) for payment thereof.

## SUBMISSION OF CLAIMS

The presentment of a claim should, wherever practicable, be made through the use of Standard Form 95 (fig. 13-2). A statement setting forth the same facts that are demanded on Standard Form 95 will suffice as a substitute but submission in this manner should be avoided.

In your work in the claims area, you will need total familiarity with Standard Form 95 and the factual details that are to be included in any claim submission. Such details provide the settlement authority with all of the pertinent information essential to a determination as to the validity, merit and ultimately the maximum amount to be awarded in final settlement of the claim.

Below follows a discussion of the procedure for the completion of Standard Form 95 or a claim submission and an explanation of the channels through which the claim is to be forwarded to complete proper review.

### Standard Form 95

A claim must be submitted by presenting in triplicate a written statement setting forth the amount of the claim, in a sum certain, and as far as possible, the facts and circumstances surrounding the incident from which the claim arose. The Claim for Damage or Injury, Standard Form 95 (see fig. 13-2) is used wherever practicable. The claim and all other papers requiring signature by the claimant must be signed by the claimant personally or by his duly authorized agent or legal representative. The signatures of the claimant or his authorized agent or legal representative must be identical throughout. When more than one person has a claim arising from a single incident, each person must file a claim separately and individually but remember that a subrogor and subrogee may file a claim jointly or separately. Only one claim combining damage to property and personal injury or death may be submitted by each claimant for each incident, but the original claim can be amended by filing a later claim.

### To Whom Submitted

The claim must be submitted by the claimant to the commanding officer of the naval activity involved, if known. Otherwise, it must be submitted to the commanding officer of any naval activity, preferably the one within which, or nearest to which, the incident occurred, or to the Judge Advocate General.

A claim is deemed to have been presented when the Navy receives from a claimant or his duly authorized agent or legal representative an executed Standard Form 95 or other formal written notification of the incident occasioning the claim, with a detailed explanation of the facts as described above.

## CONTENTS OF A CLAIM

To be afforded a thorough review a claim must be complete in every essential detail. It will be your duty to ensure that proper procedures are complied with in the submission of a claim and that all the relevant information is prepared for examination by the settlement authority.

### Information To Be Submitted

The following information is required for a complete claim:

- Full name and complete address of the claimant;
- The amount claimed for property damage, loss, or destruction, and/or the amount claimed on account of personal injury or death;
- The date, time and place of the incident giving rise to the claim;
- The persons, vehicles, or other property involved;
- The identity of the Government department, agency, or activity involved;
- A detailed description of the occurrence of the incident and the facts and circumstances attending it;
- The nature and extent of the resulting loss, destruction, or injury;
- The names and addresses of any witnesses of the incident; and
- An agreement by the claimant to accept the amount claimed in full satisfaction and final settlement of the claim stated.

### Amount of The Claim

The amount of the claim must be stated in a definite amount and be substantiated by competent evidence, as follows:

In support of claims for damage to real property (land and generally whatever is erected or growing upon or affixed to land) or personal property (generally everything that is the subject of ownership, not coming under the category real property) which has been or can be economically repaired, the claimant must submit an itemized, signed statement or estimate of the cost of repairs. If the property is not economically repairable, the value, both before and after the incident, must be stated. If the damage to real property is not economically repairable, the value, both before and after the incident, of the land damaged, or of the improvement (a valuable addition made to property, usually real property, intended to enhance its value, e.g. a building) or fixture (personal property attached to real property, becoming part and parcel of it) if it can be readily and fairly valued apart from the land, must be stated. In support of claims for damage to crops, the statement must indicate the number of acres or other unit of measure (e.g., a bushel of grain) of the crops damaged, the normal yield per unit (e.g., the dollar return for each bushel sold), the gross income which would have been realized from such normal yield and an estimate of further costs of cultivation, harvesting, and marketing (e.g., where the damage sustained by the land will not affect the costs of cultivation, harvesting, and marketing, is not scheduled for re-planting but, will ultimately lead to increased costs over the long run when a new crop is attempted); the reduction in value of the land beyond the damage to the current year's crop must also be stated. All such statements or estimates must, if possible, be made by competent, disinterested witnesses, preferably reputable dealers or officials familiar with the type of property damaged or lost. If the claimant has made payment for repairs, itemized receipts evidencing payment must be included. All itemized statements or receipted bills must be certified by the creditor (one who is owed a debt; herein the claimant) to be just and correct. A claimant for damage to, or loss or destruction of, registered or insured mail must, in addition, submit the registration or insurance receipt showing the amount of fees and postage paid or in the event receipt is not available, a signed statement by the issuing post office containing the essential information from the official records.

In support of claims for personal injury or death, the claimant or his legal representative must submit: a written report by the attending physician showing the nature and extent of the injury and the treatment; the period of hospitalization or incapacitation; the degree of temporary or permanent disability, if any; and the prognosis. Itemized statements or receipted bills, certified by the creditor to be just and correct, must be included to cover medical, hospital, or burial expenses actually incurred.

In support of claims for loss of earnings or reductions of earning capacity, which arise under either the Federal Tort Claims Act or the Military Claims Act, the claimant is required to submit a statement by his employer executed before a notary public, or where the claimant is in business for himself, a certified copy of the company records showing claimant's age, occupation, wage or salary, and time lost from work as a result of the incident. Where such records are not available, a sworn statement by the claimant must be obtained.

### Brief

The claimant may, if he desires, file with his claim a brief setting forth the law and arguments in support of his position. In the practice of law a "brief" is a written or printed document prepared by counsel to serve as the basis for his argument upon a right (herein the claim or demand for payment by the claimant) or cause of action (right to bring a suit). It embodies the points of law which the counsel desires to establish, together with the arguments and authorities upon which he rests his contention.

## INVESTIGATION

The investigation is the most important phase of claims administration. Every incident which may result in a claim either against or in favor of the Government must be promptly and thoroughly investigated by trained naval personnel. Claims cannot be paid, denied, or settled on the basis of assumptions, conclusions, and opinions which are not supported by facts. Claimants have their own set of assumptions, conclusions, and opinions and the claim must be adjudicated—in a lawsuit in many instances—on the basis of facts.

The purpose of any claims investigation is to determine the facts of an incident which has, or may become, the basis of a claim for or against the United States. If you are called upon to conduct or participate in an investigation, you should be diligent in discharging your duties so that the investigative report, when compiled, will provide a sufficient basis for the prompt and just disposition of the claim and all other official action required by the circumstances of the case. Claims submitted against persons in the Naval Service arising from the performance of official duties must be investigated and processed as claims against the United States.

## Requirements

The investigation is undertaken to provide the answers to the following basic questions:

- When did the incident occur?
- Where did the incident occur?
- Who were the parties involved?
- What were the events that resulted in the claim's origin?
- How did the incident occur?

In addition to furnishing the answers to the above questions, you will need to know which circumstances require that an investigation be conducted; be able to distinguish on what occasions immediate reports are required; when investigation without delay is required; have knowledge of the steps to be taken upon the commencement of a civil action; and further, know of the additional requirements demanded by other regulations (e.g., OPNAVINST 3750.6 series concerning aircraft accidents).

WHEN REQUIRED.–Investigations are required whenever a claim against the Navy is filed or the potential for the filing of a claim, either on behalf of or against the Navy, exists because an incident has occurred that would normally result in a claim action. Obviously then, it is necessary that the Navy have the background information and data to process all claims and to defend all suits that are initiated prior to the running of the statute of limitations. Even when recovery through judicial action may be barred by statute or case law, all death, serious injuries, losses to or destruction of property must be investigated promptly while the evidence is available.

Some incidents which would normally justify submission of a claim are barred by exclusions in the following instances:

(1) The scope of liability of the Federal Tort Claims Act contains 17 exclusions as to incidents that are not payable under its provisions (e.g., One broad exclusion reads, "Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights.") See *JAGMAN* section 2036.c & d for the comprehensive list of exclusions.

(2) The scope of liability of the "Nonscope Claims" provision bars claims under its purview in seven instances (e.g., a claim not presented in writing within two years after it accrues is not payable). See *JAGMAN* section 2065.b for the comprehensive list of exclusions.

(3) The scope of liability of the Military Claims Act adds 15 exclusions that preclude submission of claims (e.g., One exclusion reads, "Any claim for damage, loss, destruction, injury, or death resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat.) See *JAGMAN* section 2055.d for a comprehensive list of the 15 Military Claims Act exclusions.

When a claim is barred by any of these exclusions the investigative report must document the factual basis for the exclusion.

IMMEDIATE REPORTS.–Under the following circumstances an immediate letter report of the incident is mandatory:

(1) Claims or possible claims arising out of a major disaster or out of an incident giving rise to five or more possible death or serious injury claims.

(2) Upon filing a claim which could develop litigation which would involve a new precedent or point of law.

(3) Claims or possible claims which involve another agency other than the Department of the Navy. Such report must be submitted to the Judge Advocate General, with copies to the Chief of the Torts Section, Civil Division,

Department of Justice, Washington, D.C. 20530, and the appropriate reviewing authority (see fig. 13-3).

INVESTIGATION WITHOUT DELAY.—When incidents occur that demand immediate reports, those incidents must be investigated and reported upon without delay, even though no claim has been filed, and even though there may be no existing law or regulation under which any claims arising therefrom might be paid.

COMMENCEMENT OF CIVIL ACTION.—Upon receipt by the Judge Advocate General of notice from the Department of Justice, or from any other source, that an action has been commenced against the United States under the civil action provisions of the Federal Tort Claims Act 28 USC 1346(b), a request must be made upon the commandant of the appropriate naval district for an investigative report of the incident giving rise to the action if a complete report of the incident has not been received. (Recall that ideally all incidents that might potentially result in claims against the Navy are to be investigated and reported in accordance with the above paragraph concerning investigations "when required.") The activity or command which has not submitted an investigative report must be directed to comply immediately with the Judge Advocate General's request, so that the preparation of the Government's defense may begin promptly.

ADDITIONAL REQUIREMENTS.—You are cautioned that the requirements discussed in this chapter, which are based primarily on the *Manual of the Judge Advocate General*, are not to be substituted for the requirements demanded under other regulations. Claims investigation also requires that you comply with the regulations which are set out in *U.S. Navy Regulations* and the *Manual for Courts-Martial*.

### Responsibility

In the broadest sense, responsibility for the investigation of an incident normally lies with the commanding officer or officer in charge of the local military activity which is directly involved or concerned.

IMMEDIATE RESPONSIBILITY.—The commanding officer or the officer in charge of the local naval activity which is most directly concerned, normally the commanding officer or the officer in charge of the personnel involved or of the activity in which the incident occurred, has immediate responsibility for the investigation of an incident.

Whenever more than one activity is involved in an incident requiring investigation, a single investigation should be conducted if practicable. Such an investigation may be convened by the officer in command of any of the activities concerned and all the activities should cooperate in the expeditious conduct of the investigation. Disputes arising between commands are referred to the common superior of all officers involved. Whenever a single investigation of an incident involving more than one activity is conducted, the other activities involved are expected to provide all available information to the activity conducting the investigation.

If a non-naval activity or installation is involved, such activity or installation must be notified that it is required to submit an immediate letter report of the incident to the Chief of the Torts Section, Civil Division, Department of Justice.

ASSISTANCE.—On those occasions, when an accident or incident occurs at a location where there exists no naval installation in convenient proximity to expeditiously conduct an investigation, the commanding officer or officer in charge having responsibility for conducting the investigation may request assistance from any other organization of the Department of Defense. If a command assists in the investigation, the assistance may be in the way of a full and complete investigation or any portion thereof. Similarly, if the commanding officer or officer in charge of a naval installation or activity is called upon to assist another organization in the Department of Defense, such officer should provide whatever assistance he has the capability to lend. If a complete investigation is requested, it is conducted in compliance with the regulations of the service making the request. Generally, when sister services render assistance to one another in this manner, no reimbursement is made of the costs.

TABLE OF DELEGATED AND DESIGNATED AUTHORITY TO PAY A CLAIM

A.

| DELEGATED AND DESIGNATED AUTHORITY | FEDERAL TORT CLAIMS ACT | MILITARY CLAIMS ACT | ADVANCE PAYMENTS | NONSCOPE CLAIMS |
|---|---|---|---|---|
| JUDGE ADVOCATE GENERAL | unlimited** | $15,000*** | $1,000 | $1,000 |
| DEPUTY JUDGE ADVOCATE GENERAL | unlimited** | $ 2,500 | $1,000 | $1,000 |
| ASSISTANT JUDGE ADVOCATE GENERAL | unlimited** | $ 2,500 | $1,000 | $1,000 |
| DEPUTY ASSISTANT JUDGE ADVOCATE GENERAL (LITIGATION & CLAIMS) | $25,000 | $ 2,500 | $1,000 | $1,000 |
| HEAD, OPERATIONAL CLAIMS & LITIGATION BRANCH | $20,000 | $ 2,500 | $1,000 | $1,000 |
| OFFICERS IN COMMAND OF NAVY LAW CENTERS, DIRECTORS OF NAVY LAW CENTERS, & CLAIMS OFFICERS OF NAVY LAW CENTERS WHEN SPECIFICALLY DESIGNATED BY THE OFFICER IN COMMAND | $20,000 | $ 2,500 | $1,000 | $1,000 |
| OVERSEAS COMMANDS WITH A JUDGE ADVOCATE GENERAL CORPS OFFICER OR A JUDGE ADVOCATE OF THE MARINE CORPS ATTACHED | | $ 2,500 | $1,000 | $1,000 |

B. The authority to deny Federal Tort Claims and Military Claims is double the Federal Tort Claims Act authority, or double the Military Claims Act authority, if higher, as shown above. The Judge Advocate General, the Deputy Judge Advocate General, the Assistant Judge Advocate General (Civil Law), and the Deputy Assistant Judge Advocate General (Litigation and Claims) may deny any claim in any amount.

C. Nonscope claims adjudicated in the field will be forwarded to the Judge Advocate General for payment.

*advance payment of military and foreign claims

**need approval of Dept Justice over $25,000

***ovet $15,000 referred to Congress

192.95

Figure 13-3.—Table of Delegated and Designated Authority to Pay a Claim.

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STANDARD FORM 91.–The Report of Motor Vehicle Accident, Standard Form 91, is the appropriate document upon which a motor vehicle accident is to be reported. The driver of any Government motor vehicle involved in an accident of any sort is responsible for making an immediate report on the Operator's Report of Motor Vehicle Accident, Standard Form 91 (see fig. 13-4). This report is mandatory, and it must be submitted regardless of whether the other party involved states that no claim will be filed or when the only vehicles involved are Government-owned. Note that the driver must file a report in all instances when persons are injured or property was damaged, and notwithstanding the location of the accident or responsibility for its occurrence. The driver's report must, upon completion, be forwarded to the investigating officer for his determination as to its accuracy and completeness. Your duty is to ensure that the report is filed for the investigating officer, for future reference or for attachment to any subsequent investigative report of the accident.

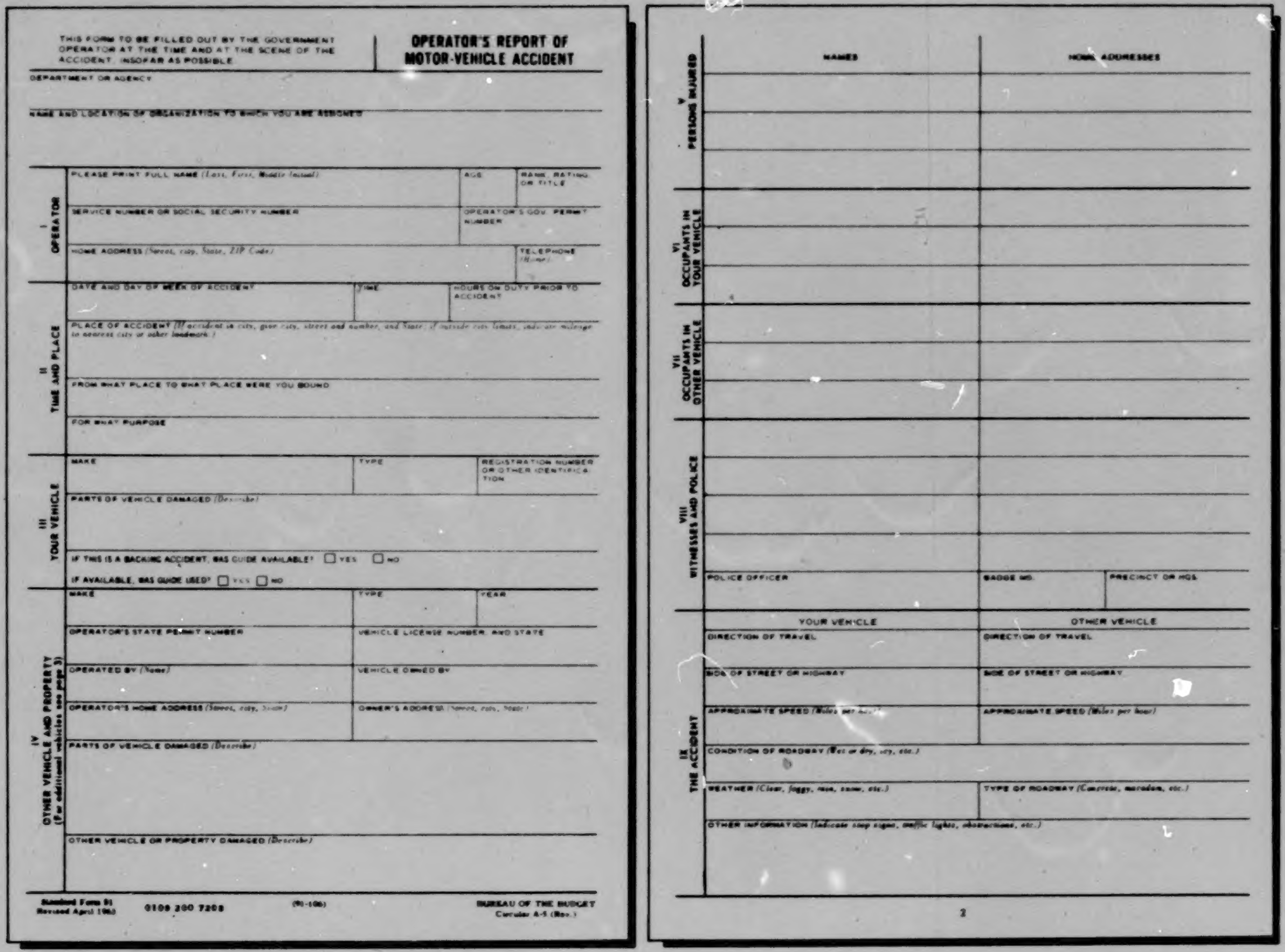
### Investigating Officer

An investigation, when required, is under the supervision of the investigating officer of the activity. The commanding officer or the officer in charge of each naval activity designates a qualified individual under his command, preferably one with legal training, who has experience in the area of investigations, as the investigation officer for the activity. The commanding officer or officer in charge may, within his discretion, appoint such assistant investigating officers as are necessary to complete the investigating duties, under the supervision of the investigating officer.

DUTIES.–The duties of the investigating officer are very extensive. You, as a Legalman, will often be called to aid him in discharging those duties. It is possible that, on occasion, you will be required to act in the capacity of an investigating officer. Therefore, it is a matter of great importance for you to possess a working knowledge of the duties that you might ultimately be expected to perform.

Herein is provided a synopsis of the responsibilities of the investigating officer. You should recall that the *Manual of the Judge Advocate General* provides the list of tasks assigned in full detail. Duties are as follows:

- To consider all information and evidence obtained as a result of any previous investigation or inquiry into any aspect of the incident.
- To conduct further investigation of the matter in fair and impartial manner, covering all phases of the incident and giving consideration to its bearing on possible claims against, or in favor of, the Government and on other interests of the Naval Service, in order that a comprehensive, accurate, and unbiased factual report of the incident may be available to higher authority for such action as is required by the circumstances.
- To obtain and consider signed statements from all competent witnesses on facts pertinent to the incident. Witnesses should be interviewed by the investigating officer at the earliest opportunity. Full statements from principal witnesses, especially the claimant or prospective claimant, should be reduced to writing and their signatures affixed if at all possible. The interests of the United States may be seriously prejudiced if the investigating officer fails to obtain such statements before witnesses forget significant facts or are confused by questions from persons with adverse interests.
- To ensure that all physical evidence of the facts is preserved intact or by means of descriptions, pictures, copies, and so forth.
- To inspect the property damage and to interview injured persons or their representatives personally; and, if such personal inspection and interview are not conducted, to state the reason for their omission.
- To ascertain the nature, extent, and the amount of damage and to obtain all pertinent repair bills or estimates, and medical, hospital, and associated bills necessary to the proper adjudication of a claim against or in favor of the Government which may arise from the incident. The procedure for the determination of the measure of damages is discussed under the heading "amount of the claim" in the general claims provisions section of this chapter. Specifically, the procedure for a determination as to the amount of damages in cases of loss of earnings and medical expenses incurred is also explained under that heading.



THIS FORM TO BE FILLED OUT BY THE GOVERNMENT OPERATOR AT THE TIME AND AT THE SCENE OF THE ACCIDENT, INSOFAR AS POSSIBLE

**OPERATOR'S REPORT OF MOTOR-VEHICLE ACCIDENT**

DEPARTMENT OR AGENCY

NAME AND LOCATION OF ORGANIZATION TO WHICH YOU ARE ASSIGNED

**I OPERATOR**

| | | |
|---|---|---|
| PLEASE PRINT FULL NAME *(Last, First, Middle Initial)* | AGE | RANK, RATING OR TITLE |
| SERVICE NUMBER OR SOCIAL SECURITY NUMBER | OPERATOR'S GOV. PERMIT NUMBER | |
| HOME ADDRESS *(Street, city, State, ZIP Code)* | TELEPHONE *(Home)* | |

**II TIME AND PLACE**

| | | |
|---|---|---|
| DATE AND DAY OF WEEK OF ACCIDENT | TIME | HOURS ON DUTY PRIOR TO ACCIDENT |

PLACE OF ACCIDENT *(If accident in city, give city, street and number, and State; if outside city limits, indicate mileage to nearest city or other landmark.)*

FROM WHAT PLACE TO WHAT PLACE WERE YOU BOUND

FOR WHAT PURPOSE

**III YOUR VEHICLE**

| | | |
|---|---|---|
| MAKE | TYPE | REGISTRATION NUMBER OR OTHER IDENTIFICATION |

PARTS OF VEHICLE DAMAGED *(Describe)*

IF THIS IS A BACKING ACCIDENT, WAS GUIDE AVAILABLE? ☐ YES ☐ NO

IF AVAILABLE, WAS GUIDE USED? ☐ YES ☐ NO

**IV OTHER VEHICLE AND PROPERTY** *(For additional vehicles see page 3)*

| | | |
|---|---|---|
| MAKE | TYPE | YEAR |
| OPERATOR'S STATE PERMIT NUMBER | VEHICLE LICENSE NUMBER, AND STATE | |
| OPERATED BY *(Name)* | VEHICLE OWNED BY | |
| OPERATOR'S HOME ADDRESS *(Street, city, State)* | OWNER'S ADDRESS *(Street, city, State)* | |

PARTS OF VEHICLE DAMAGED *(Describe)*

OTHER VEHICLE OR PROPERTY DAMAGED *(Describe)*

Standard Form 91
Revised April 1963 | 0109 200 7208 | (91-106) | BUREAU OF THE BUDGET Circular A-5 (Rev.)

**V PERSONS INJURED**

| NAMES | HOME ADDRESSES |
|---|---|
| | |
| | |
| | |

**VI OCCUPANTS IN YOUR VEHICLE**

| NAMES | HOME ADDRESSES |
|---|---|
| | |
| | |
| | |

**VII OCCUPANTS IN OTHER VEHICLE**

| NAMES | HOME ADDRESSES |
|---|---|
| | |
| | |
| | |

**VIII WITNESSES AND POLICE**

| NAMES | HOME ADDRESSES | |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| POLICE OFFICER | BADGE NO. | PRECINCT OR HQS. |

**IX THE ACCIDENT**

| YOUR VEHICLE | OTHER VEHICLE |
|---|---|
| DIRECTION OF TRAVEL | DIRECTION OF TRAVEL |
| SIDE OF STREET OR HIGHWAY | SIDE OF STREET OR HIGHWAY |
| APPROXIMATE SPEED *(Miles per hour)* | APPROXIMATE SPEED *(Miles per hour)* |

CONDITION OF ROADWAY *(Wet or dry, icy, etc.)*

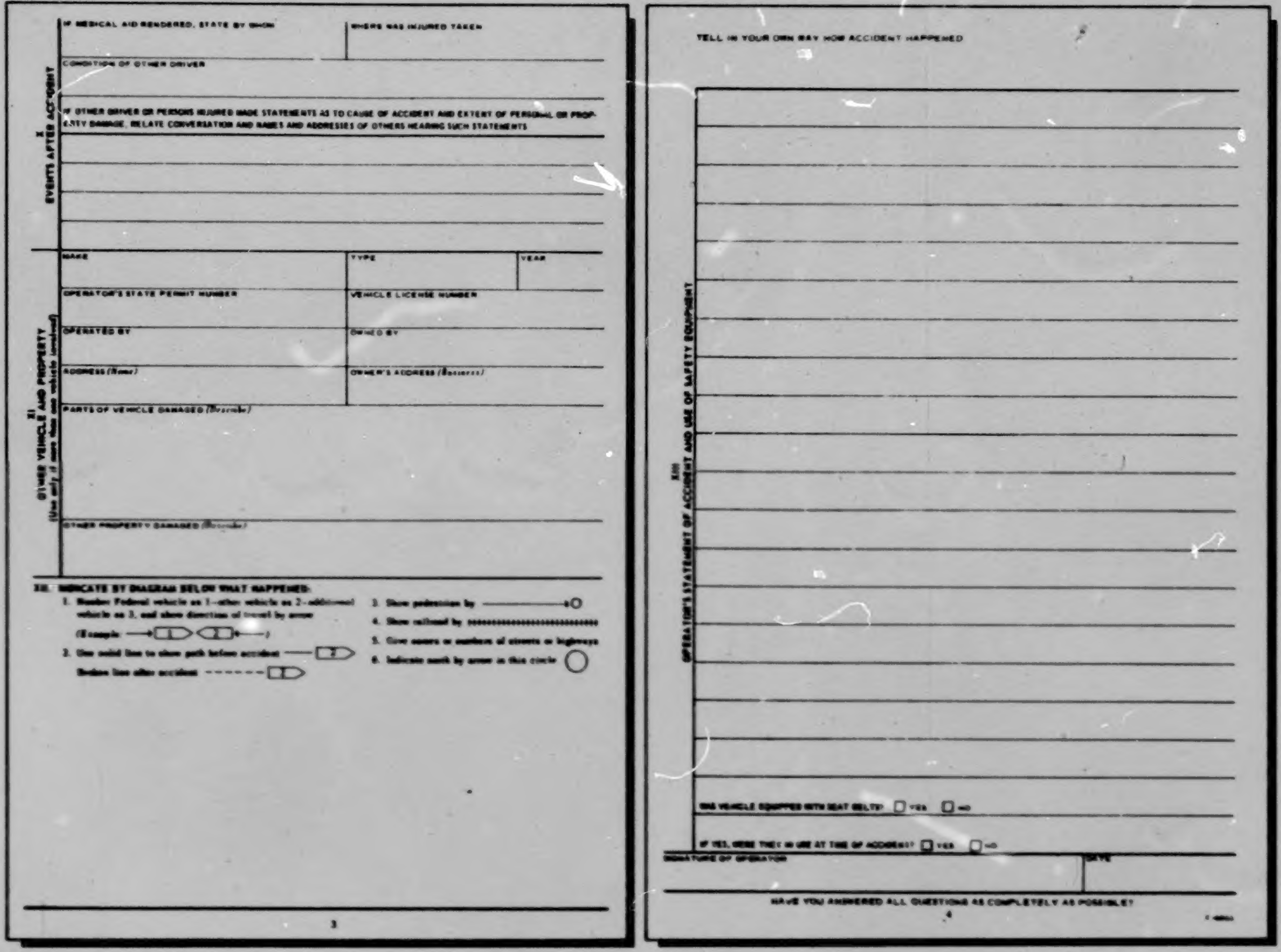
| | |
|---|---|
| WEATHER *(Clear, foggy, rain, snow, etc.)* | TYPE OF ROADWAY *(Concrete, macadam, etc.)* |

OTHER INFORMATION *(Indicate stop signs, traffic lights, obstructions, etc.)*

2

192.96.1

Figure 13-4.—Standard Form 91—Report of Motor Vehicle Accident.



**X EVENTS AFTER ACCIDENT**

IF MEDICAL AID RENDERED, STATE BY WHOM

WHERE WAS INJURED TAKEN

CONDITION OF OTHER DRIVER

IF OTHER DRIVER OR PERSONS INJURED MADE STATEMENTS AS TO CAUSE OF ACCIDENT AND EXTENT OF PERSONAL OR PROPERTY DAMAGE, RELATE CONVERSATION AND NAMES AND ADDRESSES OF OTHERS HEARING SUCH STATEMENTS

**XI OTHER VEHICLE AND PROPERTY** (Use only if more than one vehicle involved)

| | | |
|---|---|---|
| MAKE | TYPE | YEAR |
| OPERATOR'S STATE PERMIT NUMBER | VEHICLE LICENSE NUMBER | |
| OPERATED BY | OWNED BY | |
| ADDRESS *(Home)* | OWNER'S ADDRESS *(Business)* | |

PARTS OF VEHICLE DAMAGED *(Describe)*

OTHER PROPERTY DAMAGED *(Describe)*

**XII. INDICATE BY DIAGRAM BELOW WHAT HAPPENED:**

1. Number Federal vehicle as 1—other vehicle as 2—additional vehicle as 3, and show direction of travel by arrow (Example
2. Use solid line to show path before accident
   Broken line after accident
3. Show pedestrian by
4. Show railroad by
5. Give names or numbers of streets or highways
6. Indicate north by arrow in this circle

3

TELL IN YOUR OWN WAY HOW ACCIDENT HAPPENED

**XIII OPERATOR'S STATEMENT OF ACCIDENT AND USE OF SAFETY EQUIPMENT**

WAS VEHICLE EQUIPPED WITH SEAT BELTS? ☐ YES ☐ NO

IF YES, WERE THEY IN USE AT TIME OF ACCIDENT? ☐ YES ☐ NO

| | |
|---|---|
| SIGNATURE OF OPERATOR | DATE |

HAVE YOU ANSWERED ALL QUESTIONS AS COMPLETELY AS POSSIBLE?

4

192.96.2

Figure 13-4.—Standard Form 91—Report of Motor Vehicle Accident—(Continued, Reverse).

- To obtain from the proper maintenance office the latest report of material inspection of the Navy vehicle conducted prior to the accident, in all cases in which suit against the United States is likely or is pending and in all other cases in which this information appears pertinent to determine liability.
- To secure from qualified persons of the activity concerned, or of another appropriate activity, statements concerning the extent of damage or injury and reasonableness of the damages claimed. For example, such expert statements might include any or all of the following:

    (1) Medical examination at a military installation of injured persons.
    (2) Navy expert opinion in cases of property damage.
    (3) Opinions of Government experts from other than Navy sources.
    (4) Civilian expert opinions.

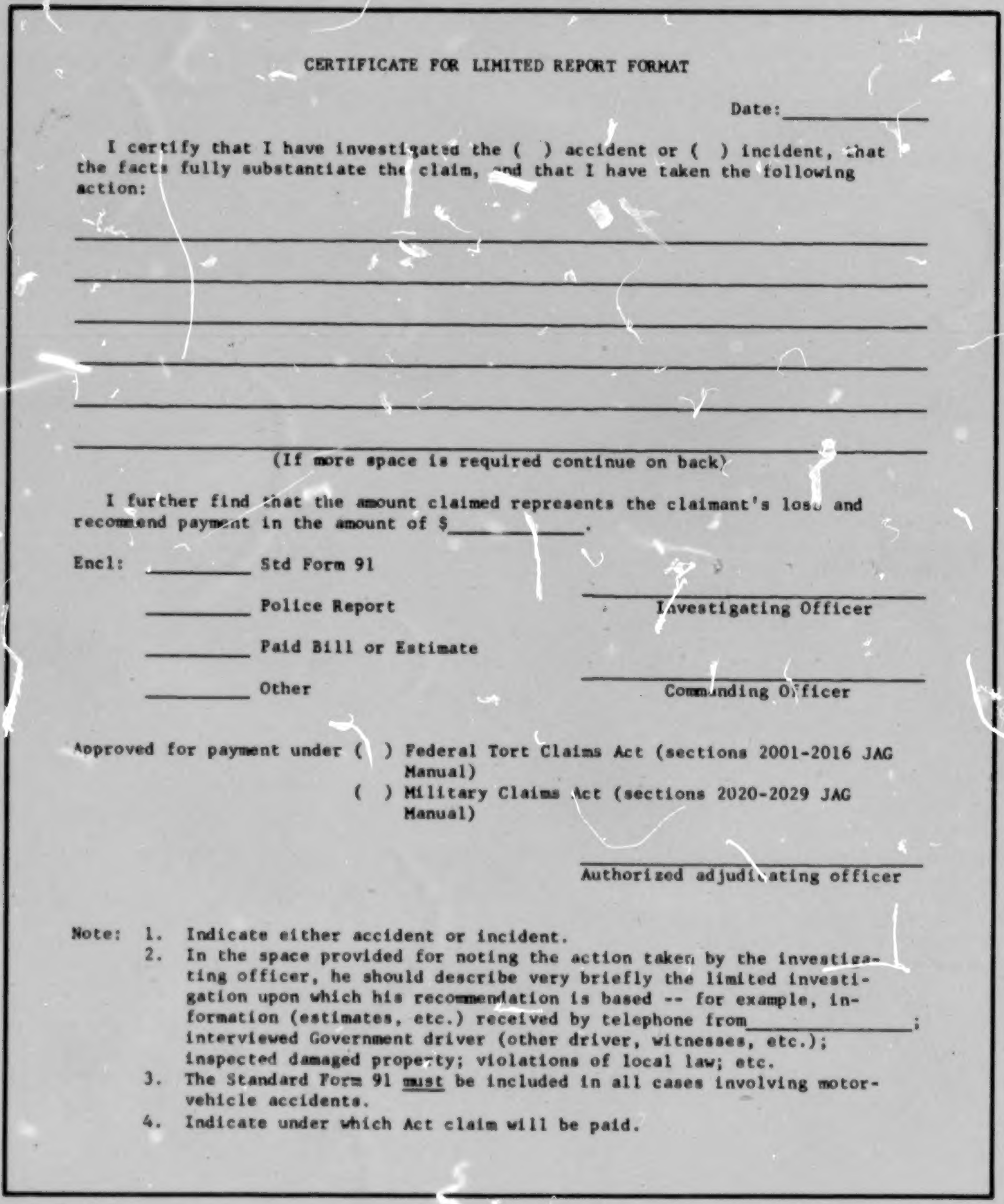
- To reduce to writing and incorporate into a unified investigative report (prepared in triplicate) all pertinent testimony, exhibits, and any other evidence taken or considered, subject, however, to the exception that claims presented in an amount of $600 or less do not require an extensive investigative report. The limited report takes the form of a certification (see fig. 13-5).
- To furnish the proper claim forms to any person who inquires concerning the procedure for making a claim against the Government as a result of a service-connected incident, and to advise such person where the claim should be filed and what substantiating evidence should accompany the claim, or if a claim has been filed, to see that the information concerning the contents of the claim has been submitted by the claimant.
- To submit a complete investigative report to his commanding officer or officer in charge as promptly as circumstances permit. In cases where not all the information as required in the contents of the claim is available as in the case of an accident requiring extended periods of hospitalization or medical care, the investigative report containing all available information should be submitted. Supplementary reports may supply the omitted information, when it becomes available.

## Contents of Report

The contents of an investigative report are written on standard forms whenever appropriate.

PERTINENT DATA.–Except in those cases where a limited investigation and report will suffice as discussed below, a report must be complete in every significant detail. The following information, as is pertinent, must be included:

- Date, time, and exact place the accident or incident occurred, specifying the highway, street, road, or intersection, including the streets between which or the number of the block where the accident or incident occurred, or the number of miles and the direction from the nearest town.
- A concise but complete statement of the circumstances of the accident or incident. Reference should be made to pertinent physical facts observed and to any material statements, admissions, or declarations against interest by any person involved.
- A statement as to whether a claim has been or is likely to be filed and, if so, the name and address of the claimant or potential claimant.
- A statement as to whether the claimant is the sole owner of the damaged property and, if not, the name and address of the owner, or part owners, and the basis of the claimant's alleged right to file a claim.
- Names, social security account numbers, grades, organizations, and addresses of military personnel and civilian employees involved as participants or witnesses.
- Names and addresses of witnesses.
- A recommendation as to whether or not military personnel and civilian employees involved were acting in the line of duty or scope of their employment. The report must contain statements and copies of records which bear on this issue for evaluation by the adjudicating authority.
- Accurate description of Government property involved and nature and amount of damage, if any. If Government property was not damaged, that fact should be stated.



CERTIFICATE FOR LIMITED REPORT FORMAT

Date:____________

I certify that I have investigated the ( ) accident or ( ) incident, that the facts fully substantiate the claim, and that I have taken the following action:

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

______________________________________________________________

(If more space is required continue on back)

I further find that the amount claimed represents the claimant's loss and recommend payment in the amount of $____________.

Encl: __________ Std Form 91

__________ Police Report

__________ Paid Bill or Estimate

__________ Other

______________________________
Investigating Officer

______________________________
Commanding Officer

Approved for payment under ( ) Federal Tort Claims Act (sections 2001-2016 JAG Manual)
( ) Military Claims Act (sections 2020-2029 JAG Manual)

______________________________
Authorized adjudicating officer

Note:
1. Indicate either accident or incident.
2. In the space provided for noting the action taken by the investigating officer, he should describe very briefly the limited investigation upon which his recommendation is based -- for example, information (estimates, etc.) received by telephone from________________; interviewed Government driver (other driver, witnesses, etc.); inspected damaged property; violations of local law; etc.
3. The Standard Form 91 must be included in all cases involving motor-vehicle accidents.
4. Indicate under which Act claim will be paid.

192.97

Figure 12-5.—Certificate for Limited Report Format.

- Accurate description of all privately owned property involved, nature and amount of damage, if any, and the names and addresses of the owners thereof.
- Names, addresses, and ages of all civilians or military personnel injured or killed; information as to the nature and extent of injuries, degree of permanent disability, prognosis, period of hospitalization, name and address of attending physician and hospital, and amount of medical, hospital, and burial expenses actually incurred; occupation and wage or salary of civilians injured or killed; and names, address, ages, relationship, and extent of dependency of survivors of any person fatally injured.
- If straying animals are involved, a statement whether the jurisdiction has an "open range law" and, if so, reference to such statute.
- A statement as to whether any person involved violated any state of Federal statute, local ordinance, or installation regulation and, if so, in what respect. The statute, ordinance, or regulation should be set out in full.
- A statement as to whether a police investigation was made. A copy of the police report of investigation should be included if available.
- A statement as to whether arrests were made or charges preferred, and the result of any trial or hearing in civil or military courts.
- The comments and recommendations of the investigating officer as to the existence of liability; as to the amount of the damage, loss or destruction, or the amount payable on account of personal injury or death; and as to whether and to what extent such liability, damage, loss, destruction, personal injury or death is covered by insurance companies concerned, or is covered by a contractural agreement to indemnify the Government.
- As many exhibits or enclosures as are pertinent and are secured in connection with the performance of the investigation must be obtained during the course of the investigation and attached to the investigative report, forming a part thereof. The enclosures must be numbered consecutively and listed numerically in the investigative report in accordance with standard Navy correspondence procedure.

Limited Investigation and Report.–A more limited investigation and report may be submitted in lieu of the comprehensive investigation explained above. The occasions on which such an abbreviated report will suffice are as follows:

- A claim of $600 or less has been presented;
- The claim is cognizable under the Federal Tort Claims Act or the Military Claims Act;
- The amount payable on the claim has been agreed upon.

This limited report takes the form of a certification (see fig. 13-5).

### Action On An Investigative Report

The action taken on an investigative report includes that of the CO or OIC or the adjudicating authority as discussed below.

BY CO OR OIC.–Action by the commanding officer or officer in charge includes the review of the investigative report and its resubmission to the investigating officer for correction, if omissions are noted. The report should be reviewed and if practicable, endorsed by the staff judge advocate. If a claim has been filed, the original claim and all the copies of the claim filed by the claimant and the investigative report must be forwarded to the appropriate adjudicatory authority. If a claim has not been filed, the investigative report should be forwarded by endorsement, with any pertinent comments or recommendations.

BY REVIEWING AUTHORITY.–A reviewing authority may return an investigative report to the originating command for additional investigation and information as necessary. When deemed satisfactory, the report must be endorsed and forwarded to the next-level authority with appropriate recommendations. If the reviewing authority could, under any circumstance, be an adjudicating authority for a claim submitted as a result of the incident which occasioned the need for the report, the reviewing authority must retain a copy of the investigative report for two years. If a claim is received subsequent to the completion of an investigative report, all holders of the report must be notified.

## ACTION ON A CLAIM

After the investigation of an incident occasioning a claim, the claim must be processed and submitted through appropriate channels to the authority responsible for determining its merits. You, as the Legalman, will be the individual charged with the responsibility for handling the preliminary steps required before the rendering of a decision on a claim.

Below is an explanation of the various steps in the claims process from submission through to ultimate resolution.

### By Receiving Officer Or Command

- The first command receiving the complaint shall stamp or mark the date of receipt.
- The receiving command must determine which activity is most directly involved.
- When the receiving command is most directly involved and if an investigation has been conducted, it should evaluate the claim in light of the investigative report. Additionally, the command should notify all other holders of investigative report that a claim has been filed.
- If the receiving command is not the most directly involved, it should forward the claim to the command or activity that is most directly concerned.

### Action by Adjudicating Authority

The adjudicating authority is ultimately responsible to see that a complete and adequate investigation has been conducted, the proper date recorded and all commands involved notified of the claim submission. The authority must also determine the sufficiency of the claim and within its discretion may send the claim back to the claimant with an explanation of the corrective action needed. Claims within the adjudicating authority's jurisdiction are to be approved or disapproved by that authority.

If a claim is submitted which is in excess of the local adjudicatory authority and if settlement is appropriate and possible, the local authority should attempt at least to negotiate a settlement figure. In such a case the claimant is to be notified that the local authority must await final approval from higher authority of any proposal of settlement that it has offered to claimant.

## NOTICE AND APPEAL UNDER THE MILITARY CLAIMS ACT

A claim under this act which is disapproved in whole or in part may be appealed under the provisions of the Act.

### Claimant To Be Notified

A claimant must be permitted to file an appeal of a claim under the Military Claims Act any time within 30 days of his notification of disapproval.

### Appeal

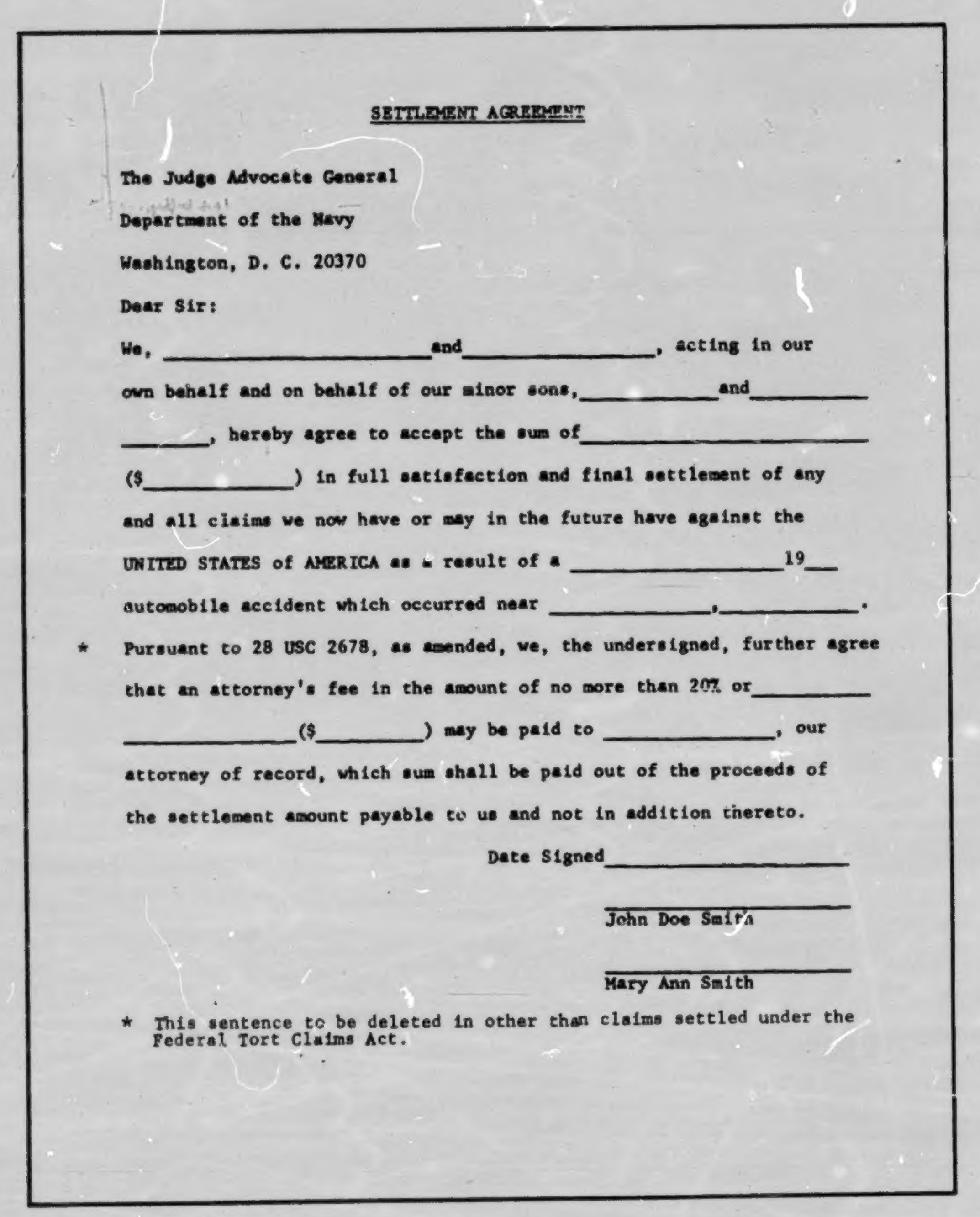
An appeal under the Act must be in writing and explain in detail the reasons upon which the appeal rests. An appeal may be decided by the Secretary of the Navy or the Judge Advocate General except where the Judge Advocate General has originally disapproved the claim; in such a case the Secretary decides the appeal.

## SETTLEMENT AGREEMENT

A settlement agreement is the express document upon which the parties having disputed matters between them reach or ascertain what is due from one to another.

### Difference Between Fully and Partially Approved Claims

You are reminded that when settlement is finally reached, Standard Form 95 is to be used as the document recording the settlement agreement only when settlement is to be in the full amount of the claim. In cases where the claim is approved for a lesser amount than that claimed, no payment is made until the claimant specifies in writing his willingness to accept such amount in full satisfaction and final settlement of the claim (see fig. 13-6).



SETTLEMENT AGREEMENT

The Judge Advocate General
Department of the Navy
Washington, D. C. 20370

Dear Sir:

We, ____________________ and ______________, acting in our own behalf and on behalf of our minor sons, __________ and __________ ______, hereby agree to accept the sum of ____________________ ($__________) in full satisfaction and final settlement of any and all claims we now have or may in the future have against the UNITED STATES of AMERICA as a result of a ______________ 19__ automobile accident which occurred near ____________, __________.

* Pursuant to 28 USC 2678, as amended, we, the undersigned, further agree that an attorney's fee in the amount of no more than 20% or __________ ____________ ($________) may be paid to ____________, our attorney of record, which sum shall be paid out of the proceeds of the settlement amount payable to us and not in addition thereto.

Date Signed____________________

____________________
John Doe Smith

____________________
Mary Ann Smith

* This sentence to be deleted in other than claims settled under the Federal Tort Claims Act.

192.98

Figure 13-6.—Settlement Agreement.

### Release

Acceptance by the claimant of any award or settlement made by the Secretary of the Navy or his designees, or of any award, compromise or settlement made by the Attorney General is final and conclusive upon the claimant, and it constitutes a complete release of the United States of any liability under the subject matter of the claim. Acceptance by the claimant of an award or settlement under the administrative settlement provisions of the Federal Tort Claims Act also constitutes release by the claimant of any claim against any employee of the Government whose act or omission gave rise to the claim.

## DISCLOSURE OF INFORMATION

You, as a Legalman, must be acutely aware that military personnel or civilian employees of the Navy are not permitted to release copies of official papers or other information that can be used as the basis of a claim against the United States, unless such release has the prior approval of competent authority. Remember that you may provide the necessary claim forms along with information and advice to claimants concerning the correct procedure for filing the claim. The adjudicatory authority may disclose information from an official *JAG Manual* investigation exclusive of endorsements, findings of fact, opinions, recommendations, appended material from personnel and medical records and other material privileged under the Freedom of Information Act (5USC552) provided that all the claims filed are within his authority.

## CLAIMS IN FAVOR OF THE UNITED STATES

Claims in favor of the United States are generally referred to as "affirmative claims." There are two basic statutory authorities under which the Government may recover from the parties liable for damage inflicted upon it. These are the Medical Care Recovery Act 42 USC 2651-53 and the Federal Claims Collection Act 31 USC 952. At this point we are concerned with recovery of property damage claims under the Federal Claims Collection Act.

### Civil Claims For Property Damage

The below listed officers are authorized to pursue collect, compromise, and terminate action on property damage claims in favor of the United States:

- The Judge Advocate General; the Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (Litigation and Claims); the Director of Litigation and Claims;
- The commandant of the naval district or district judge advocate of a naval district;
- The officer in command or the director of a Navy law center; and
- Such other officers as may be designated by the Secretary of the Navy.

Claims in excess of $20,000 require prior approval of the Department of Justice before being compromised or terminated. The officers listed above should attempt to reach compromise of claims in excess of $20,000, but these must be forwarded to the Judge Advocate General for referral to the Department of Justice for final settlement.

### Collection Authority

When payment of a property damage claim either in full payment or in the amount of a compromise settlement is tendered, the payment should be in the form of a check or money order made payable to the collecting organization(e.g., "Commander Naval Forces Marianas").

### Direct Private Payment For Repairs

In some cases, a person who has damaged Government property (or his insurer) may offer to repair the property or to arrange for its repair. If it is in the best interests of the Government, the commanding officer or officer in charge of the activity involved is authorized to accept such an offer.

### Execution of Releases

The officers listed above under the heading "Civil Claims for Property Damage" are authorized to execute a release on behalf of the Government in the following instances:

- When full payment or payment of the bills of a private contractor hired to complete repairs is tendered.
- When a claim is under $20,000.
- When permission to compromise has been granted by the Department of Justice.

### Reports

The officers listed above under "Civil Claims for Property Damage" must make quarterly reports on property damage claims to the Judge Advocate General. The report must include the following:

- Number of claims asserted;
- Dollar amount of claims asserted,
- Number of claims collected;
- Dollar amount of claims collected.

## PERSONNEL CLAIMS REGULATIONS

The personnel claims regulations of the Navy have as their objective, "Justice for the Good Citizens of the Navy" who are beset with personal losses incident to service. The most recent revisions to the regulations are designed to facilitate rapid settlement of claims for personal losses and get the money into the hands of the claimant as soon as possible. The following paragraphs will expose your role in the process of assisting fellow "Navy citizens", who have incurred personal losses and consequently, accrued claims against the Government.

## STATUTORY AUTHORITY

Personnel claims are those that arise as the result of damage to or loss of personal property of service personnel and civilian employees of the Navy and Marine Corps. The loss must be incident to service, and possession of the property must be reasonable, useful or proper under the circumstances. The statutory authority for claims of this nature, which are limited in amount to a maximum of $10,000, is the Military Personnel and Civilian Employees Claims Act of 1964, 31 USC 240-243.

## DEFINITIONS

Familiarity with the following definitions is mandatory for the expeditious and efficient disposition of the personnel claims of members of the naval establishment.

CLAIM–For the purposes of this act, any claim filed upon oath by the commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps, including their reserve components, and by civilian employees of the naval establishment, for damage, loss, destruction, capture or abandonment of their personal property incident to service.

SERVICE PERSONNEL–The commissioned, appointed, enrolled, and enlisted personnel of the Navy and Marine Corps.

CIVILIAN EMPLOYEES–Employees of the Naval Establishment, including those paid on a contract basis.

"NAVY" and "NAVAL"–include Marine Corps except where the context indicates to the contrary.

"DAMAGE OR LOSS"–includes destruction, capture, or abandonment.

## CLAIMS PAYABLE

Claims are payable when damage to or loss of the claimant's personal property occurs under any of the following circumstances:

- Property losses in quarters or other authorized places
- Transportation losses
- Marine or aircraft disaster losses
- Enemy action losses
- Property subjected to extraordinary risks losses
- Property used for the benefit of the government

- Negligence of the government
- Money deposited for safekeeping, transmittal, or other authorized disposition
- Motor vehicle losses (see *JAG Manual*, section 2103.i.)
- House trailer losses (see *JAG Manual*, section 2103.j.)
- Theft losses

## CLAIMS NOT PAYABLE

Claims may not be allowed for:

- Money or currency losses
- Unserviceable property
- Easily pilferable articles
- Articles acquired for other persons
- Articles of extraordinary value
- Articles being worn
- Intangible property
- Property owned by the United States
- Motor vehicles (see *JAG Manual*, section 2104.i.)
- Enemy property
- Losses of insurers and subrogees
- Losses recovered from insurers and carriers
- Losses in unassigned quarters in the United States
- Contractual coverage
- Negligence of claimant
- Business property
- Fees for obtaining estimates of repair
- Theft (see *JAG Manual*, section 2104.r.)
- Trailers (see *JAG Manual*, section 2104.s.)
- Violation of law or directives

## COMPUTATION OF AWARD

Below is an explanation of the procedures to be employed in computing an award under the Military Personnel and Civilian Employees Claims Act.

### Cost of Property As Basis

The amount awarded on any item of property can not exceed its depreciated replacement cost at the time of loss. Unless proved otherwise, replacement cost is based on the price paid in cash for the property or, if not acquired by purchase or exchange (e.g., property received as a gift), the value at the time of acquisition. The amount normally payable on property damaged beyond economical repair is found by determining its depreciated value at or before the time of loss, less any salvage value. The adjudicating authority may require surrender of the item, in lieu of deducting the salvage value from the depreciated value to arrive at settlement pay-off, and then order full payment of the depreciated value. If the damage to the property is less than the depreciated value of the item, then it is considered economically repairable and only the cost of repairs is paid to the claimant.

### Depreciation

Depreciation is the deterioration, or loss, or lessening in value, arising from age, use, and improvements due to better methods. Depreciation in value is computed by considering the type of article involved, its cost, condition when lost or damaged beyond economical repair, and the time elapsed between the date of acquisition and the date of the accrual of the claim.

### Expensive Articles

Allowance for expensive items, including heirlooms, or for items purchased at unreasonably high prices, is based on the fair and reasonable purchase price of substitute articles of a similar nature.

### Acquisition

Allowance for articles acquired by barter (trading) can not exceed the adjusted cost (value at acquisition–less depreciation) of the articles tendered in barter.

### Black Market

No reimbursement is permissible for articles acquired in black market or other prohibited activities.

### Maximum Allowances

The Judge Advocate General promulgates to the adjudicators, periodically, guides for determining the maximum amount allowable for specific articles and for establishing maximum quantities of particular commodities which will be allowed to each member.

## FORM OF CLAIM

The claim under the Military Personnel and Civilian Employees Claims Act supra, must be submitted by presenting a detailed statement in duplicate, signed by or on behalf of the claimant, on DD Form 1842 (see fig. 13-7) with DD Form 1845 (see fig. 13-8) attached. If the claims investigating officer desires a copy of the adjudicated claim returned to his office for use in adjusting recoveries later received from carriers, contractors or insurers, a third copy of the claims form clearly marked for this purpose must be included. If DD Form 1842 and 1845 are not available any writing is to be accepted and considered if it asserts a demand for a specific sum and substantially describes the facts necessary to support a claim cognizable under the act.

## EVIDENCE IN SUPPORT OF CLAIMS

You should take great care to ensure that the claimant complies with the evidence requirements needed to support a claim. His thorough preparation of the claim will substantially expedite adjudication, thus avoiding delays occasioned by the need of additional evidence by the adjudicatory authority during review.

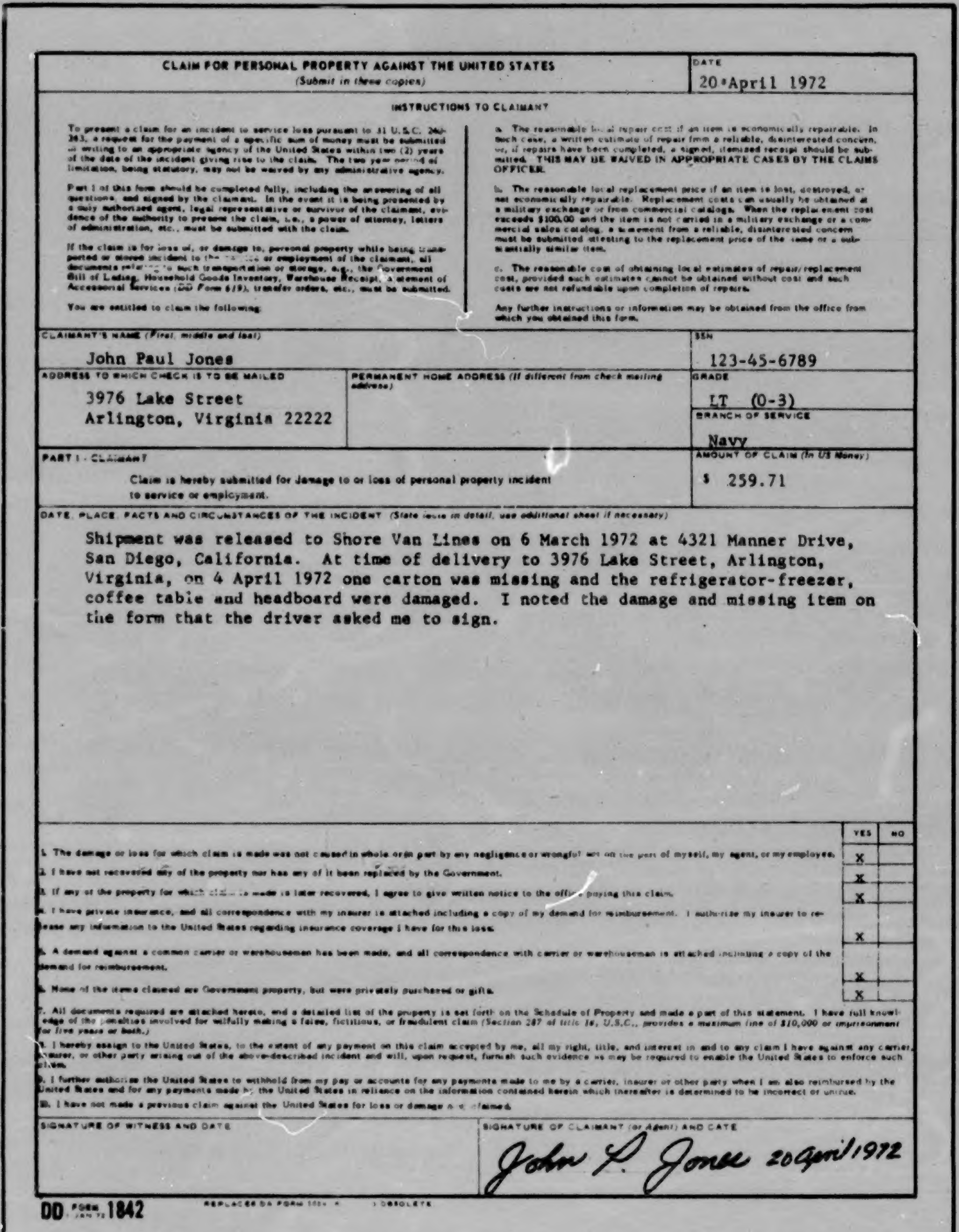
### General

The claim should be supported by the evidence required on the claim form and, in addition, the following evidence when applicable:

- Corroborating statement from a person who has personal knowledge of the facts concerning the claim.
- Statement of property recovered or replaced in kind.
- Itemized bill of repair for damaged property which has been repaired.
- At least one written estimate of the cost of repairs from a competent bidder or person if the property is repairable but has not been repaired. "Competent bidder or person" is one who has had experience in the type of repairs needed and is in a position to know the costs of the repairs on the current market. An exception will be permitted when, in the opinion of the investigating officer, the estimate fee will be out of proportion to the costs of repairs. In such a case the claims investigating officer, with the concurrence of the claimant, will recommend an amount for payment. The claimant, if claiming that the property is beyond economical repair, must satisfy the investigating officer that the item is in such a state.
- Proof of a change in value when a claimant indicates that the replacement cost of an item lost or destroyed exceeds either the price paid in cash or property, or if not acquired by purchase or exchange, the value at the time of acquisition. (The claimant will be required to substantiate his claim as per *JAGMAN* Chapter 21 Section 2117(a) (5).)
- Certified statement concerning any insurance coverage and reimbursement obtained from the insurer. (The statement should describe the type of insurance and coverage and give the name of the insurer. If the claimant has insurance, but has not submitted a claim, the failure to do so should be explained.)

### Waivers of Written Estimates

Regardless of the total amount of the claim, the requirement for written estimates of the cost of repairs of any item for which the amount claimed is less than $100 normally is waived, provided the claims investigating officer has personally inspected the property, or the evidence otherwise is sufficient to support the claim. In the event that the claimant and the claims investigating officer cannot agree on a reasonable value, the claims investigating officer should describe in his report the facts upon which his recommendation is based. The value set by the claims investigating officer is not necessarily binding on the adjudicatory authority and the claimant may submit written estimates or other supporting evidence at his option.



**CLAIM FOR PERSONAL PROPERTY AGAINST THE UNITED STATES**
*(Submit in three copies)*

DATE
20 April 1972

INSTRUCTIONS TO CLAIMANT

To present a claim for an incident to service loss pursuant to 31 U.S.C. 240-243, a request for the payment of a specific sum of money must be submitted in writing to an appropriate agency of the United States within two (2) years of the date of the incident giving rise to the claim. The two year period of limitation, being statutory, may not be waived by any administrative agency.

Part I of this form should be completed fully, including the answering of all questions, and signed by the claimant. In the event it is being presented by a duly authorized agent, legal representative or survivor of the claimant, evidence of the authority to present the claim, i.e., a power of attorney, letters of administration, etc., must be submitted with the claim.

If the claim is for loss of, or damage to, personal property while being transported or stored incident to the service or employment of the claimant, all documents relating to such transportation or storage, e.g., the Government Bill of Lading, Household Goods Inventory, Warehouse Receipt, Statement of Accessorial Services (*DD Form 619*), transfer orders, etc., must be submitted.

You are entitled to claim the following:

a. The reasonable local repair cost if an item is economically repairable. In such case, a written estimate of repair from a reliable, disinterested concern, or, if repairs have been completed, a signed, itemized receipt should be submitted. THIS MAY BE WAIVED IN APPROPRIATE CASES BY THE CLAIMS OFFICER.

b. The reasonable local replacement price if an item is lost, destroyed, or not economically repairable. Replacement costs can usually be obtained at a military exchange or from commercial catalogs. When the replacement cost exceeds $100.00 and the item is not carried in a military exchange or a commercial sales catalog, a statement from a reliable, disinterested concern must be submitted attesting to the replacement price of the same or a substantially similar item.

c. The reasonable cost of obtaining local estimates of repair/replacement cost, provided such estimates cannot be obtained without cost and such costs are not refundable upon completion of repairs.

Any further instructions or information may be obtained from the office from which you obtained this form.

CLAIMANT'S NAME *(First, middle and last)*
John Paul Jones

SSN
123-45-6789

ADDRESS TO WHICH CHECK IS TO BE MAILED
3976 Lake Street
Arlington, Virginia 22222

PERMANENT HOME ADDRESS *(If different from check mailing address)*

GRADE
LT (0-3)

BRANCH OF SERVICE
Navy

PART I - CLAIMANT
Claim is hereby submitted for damage to or loss of personal property incident to service or employment.

AMOUNT OF CLAIM *(In US Money)*
$ 259.71

DATE, PLACE, FACTS AND CIRCUMSTANCES OF THE INCIDENT *(State facts in detail, use additional sheet if necessary)*

Shipment was released to Shore Van Lines on 6 March 1972 at 4321 Manner Drive, San Diego, California. At time of delivery to 3976 Lake Street, Arlington, Virginia, on 4 April 1972 one carton was missing and the refrigerator-freezer, coffee table and headboard were damaged. I noted the damage and missing item on the form that the driver asked me to sign.

| | YES | NO |
|---|---|---|
| 1. The damage or loss for which claim is made was not caused in whole or in part by any negligence or wrongful act on the part of myself, my agent, or my employee. | X | |
| 2. I have not recovered any of the property nor has any of it been replaced by the Government. | X | |
| 3. If any of the property for which claim is made is later recovered, I agree to give written notice to the office paying this claim. | X | |
| 4. I have private insurance, and all correspondence with my insurer is attached including a copy of my demand for reimbursement. I authorize my insurer to release any information to the United States regarding insurance coverage I have for this loss. | X | |
| 5. A demand against a common carrier or warehouseman has been made, and all correspondence with carrier or warehouseman is attached including a copy of the demand for reimbursement. | X | |
| 6. None of the items claimed are Government property, but were privately purchased or gifts. | X | |

7. All documents required are attached hereto, and a detailed list of the property is set forth on the Schedule of Property and made a part of this statement. I have full knowledge of the penalties involved for wilfully making a false, fictitious, or fraudulent claim *(Section 287 of title 18, U.S.C., provides a maximum fine of $10,000 or imprisonment for five years or both.)*

8. I hereby assign to the United States, to the extent of any payment on this claim accepted by me, all my right, title, and interest in and to any claim I have against any carrier, insurer, or other party arising out of the above-described incident and will, upon request, furnish such evidence as may be required to enable the United States to enforce such claim.

9. I further authorize the United States to withhold from my pay or accounts for any payments made to me by a carrier, insurer or other party when I am also reimbursed by the United States and for any payments made by the United States in reliance on the information contained herein which thereafter is determined to be incorrect or untrue.

10. I have not made a previous claim against the United States for loss or damage now claimed.

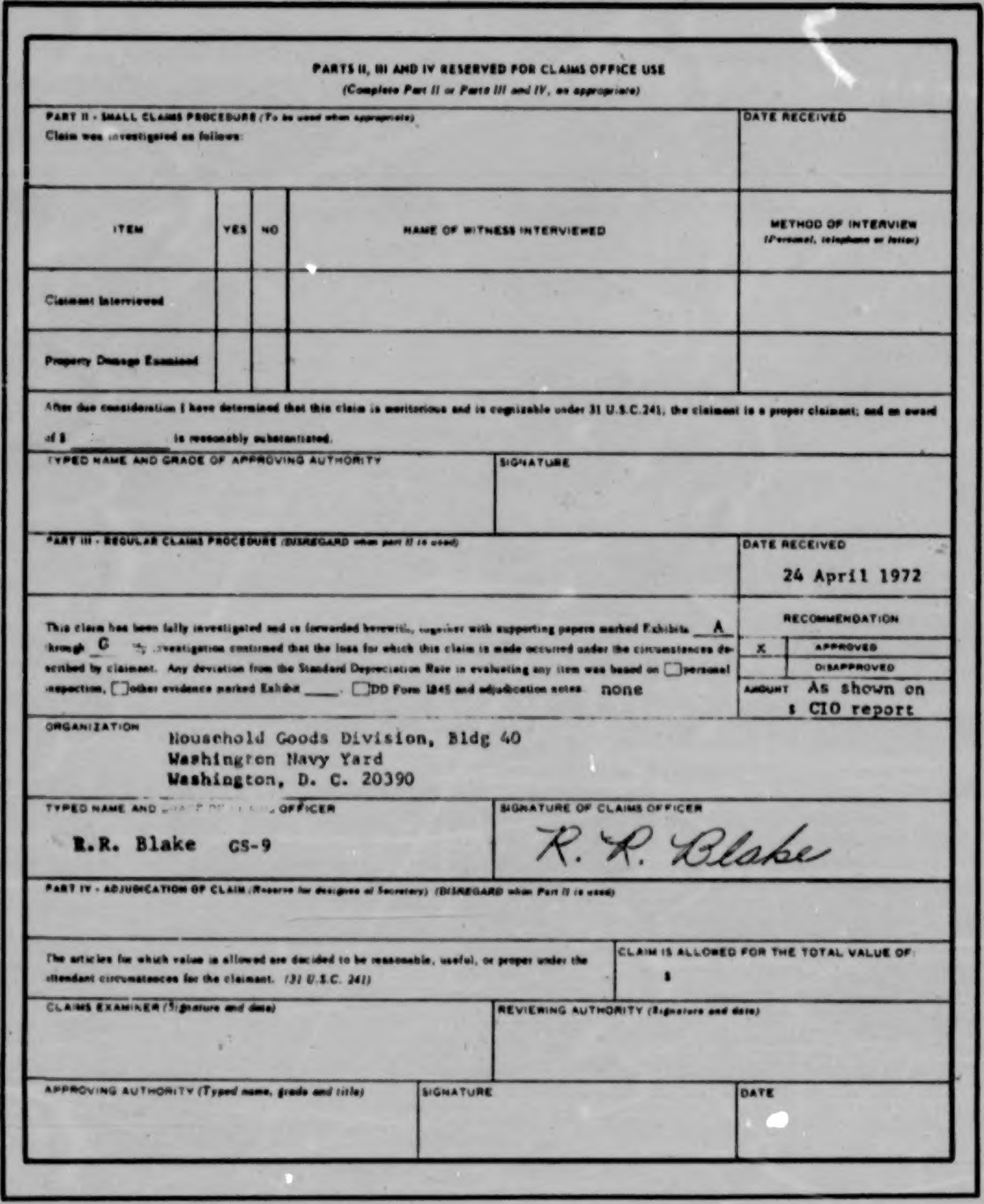
SIGNATURE OF WITNESS AND DATE

SIGNATURE OF CLAIMANT *(or Agent)* AND DATE
John P. Jones 20 April 1972

DD FORM 1 JAN 73 1842 REPLACES DA FORM [illegible] OBSOLETE

192.99.1

Figure 13-7.—DD Form 1842—Claim for Personal Property Against the United States.



**PARTS II, III AND IV RESERVED FOR CLAIMS OFFICE USE**
*(Complete Part II or Parts III and IV, as appropriate)*

| | |
|---|---|
| PART II - SMALL CLAIMS PROCEDURE *(To be used when appropriate)*<br>Claim was investigated as follows: | DATE RECEIVED |

| ITEM | YES | NO | NAME OF WITNESS INTERVIEWED | METHOD OF INTERVIEW *(Personal, telephone or letter)* |
|---|---|---|---|---|
| Claimant Interviewed | | | | |
| Property Damage Examined | | | | |

After due consideration I have determined that this claim is meritorious and is cognizable under 31 U.S.C.241, the claimant is a proper claimant; and an award of $ ________ is reasonably substantiated.

| | |
|---|---|
| TYPED NAME AND GRADE OF APPROVING AUTHORITY | SIGNATURE |

| | |
|---|---|
| PART III - REGULAR CLAIMS PROCEDURE *(DISREGARD when part II is used)* | DATE RECEIVED<br>24 April 1972 |

This claim has been fully investigated and is forwarded herewith, together with supporting papers marked Exhibits A through G By investigation confirmed that the loss for which this claim is made occurred under the circumstances described by claimant. Any deviation from the Standard Depreciation Rate in evaluating any item was based on ☐ personal inspection, ☐ other evidence marked Exhibit ____, ☐ DD Form 1845 and adjudication notes. none

| RECOMMENDATION | |
|---|---|
| X | APPROVED |
| | DISAPPROVED |
| AMOUNT | As shown on<br>$ CIO report |

ORGANIZATION
Household Goods Division, Bldg 40
Washington Navy Yard
Washington, D. C. 20390

| | |
|---|---|
| TYPED NAME AND GRADE OF CLAIMS OFFICER<br>R.R. Blake GS-9 | SIGNATURE OF CLAIMS OFFICER<br>R. R. Blake |

PART IV - ADJUDICATION OF CLAIM *(Reserve for designee of Secretary)* *(DISREGARD when Part II is used)*

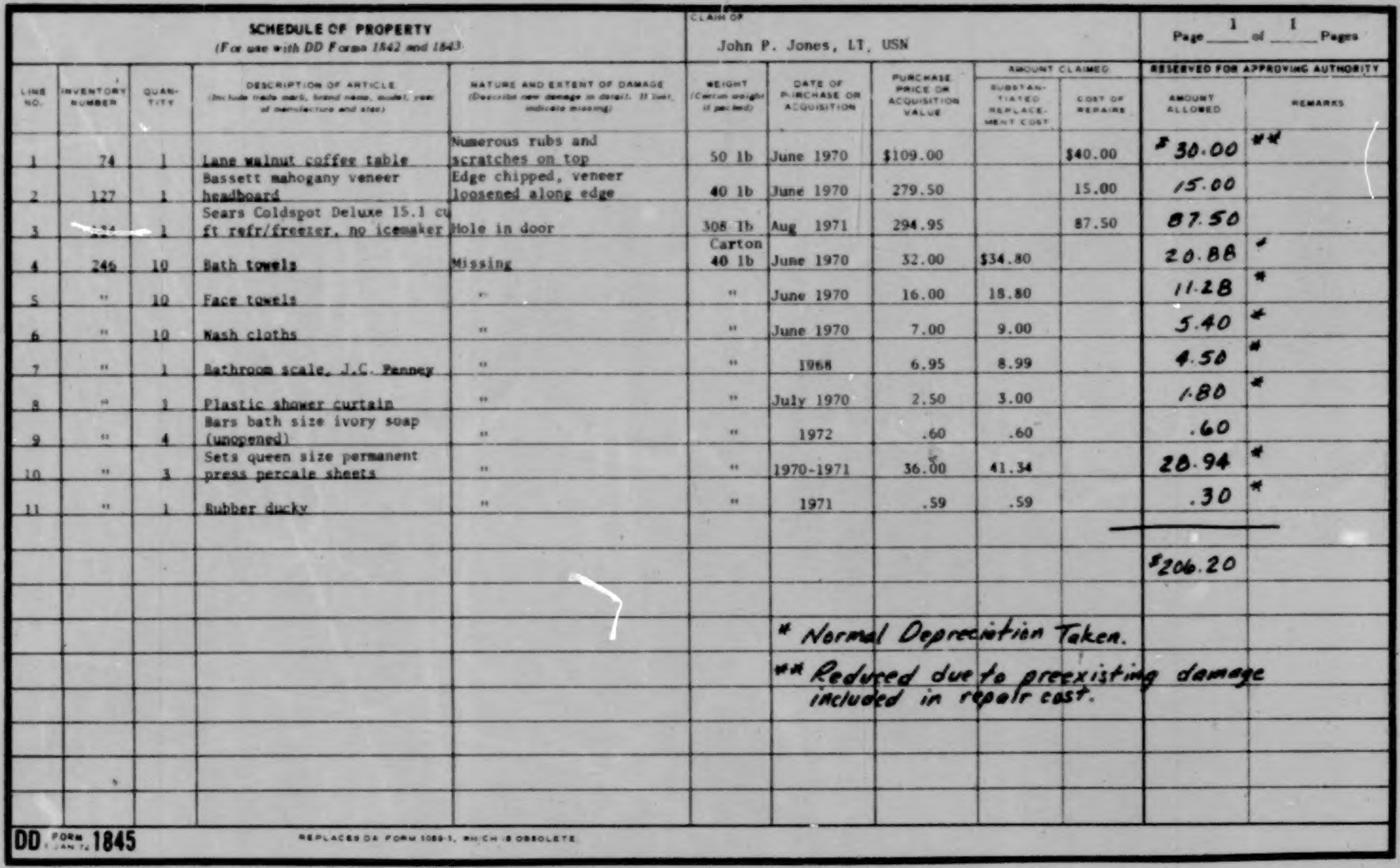
| | |
|---|---|
| The articles for which value is allowed are decided to be reasonable, useful, or proper under the attendant circumstances for the claimant. *(31 U.S.C. 241)* | CLAIM IS ALLOWED FOR THE TOTAL VALUE OF:<br>$ |

| | |
|---|---|
| CLAIMS EXAMINER *(Signature and date)* | REVIEWING AUTHORITY *(Signature and date)* |

| | | |
|---|---|---|
| APPROVING AUTHORITY *(Typed name, grade and title)* | SIGNATURE | DATE |

192.99.2

Figure 13-7.—DD Form 1842—Claim for Personal Property Against the United States—(Continued, Reverse).



**SCHEDULE OF PROPERTY**
*(For use with DD Forms 1842 and 1843)*

CLAIM OF
John P. Jones, LT, USN

Page 1 of 1 Pages

| LINE NO. | INVENTORY NUMBER | QUANTITY | DESCRIPTION OF ARTICLE (Include trade mark, brand name, model, year of manufacture and size) | NATURE AND EXTENT OF DAMAGE (Describe new damage in detail. If lost, indicate missing) | WEIGHT (Carton weight if packed) | DATE OF PURCHASE OR ACQUISITION | PURCHASE PRICE OR ACQUISITION VALUE | AMOUNT CLAIMED |  | RESERVED FOR APPROVING AUTHORITY |  |
|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  |  |  |  |  |  |  | SUBSTANTIATED REPLACEMENT COST | COST OF REPAIRS | AMOUNT ALLOWED | REMARKS |
| 1 | 74 | 1 | Lane walnut coffee table | Numerous rubs and scratches on top | 50 lb | June 1970 | $109.00 |  | $40.00 | $ 30.00 | ** |
| 2 | 127 | 1 | Bassett mahogany veneer headboard | Edge chipped, veneer loosened along edge | 40 lb | June 1970 | 279.50 |  | 15.00 | 15.00 |  |
| 3 | 134 | 1 | Sears Coldspot Deluxe 15.1 cu ft refr/freezer, no icemaker | Hole in door | 308 lb | Aug 1971 | 294.95 |  | 87.50 | 87.50 |  |
| 4 | 246 | 10 | Bath towels | Missing | Carton 40 lb | June 1970 | 32.00 | $34.80 |  | 20.88 | * |
| 5 | " | 10 | Face towels | " | " | June 1970 | 16.00 | 18.80 |  | 11.28 | * |
| 6 | " | 10 | Wash cloths | " | " | June 1970 | 7.00 | 9.00 |  | 5.40 | * |
| 7 | " | 1 | Bathroom scale, J.C. Penney | " | " | 1968 | 6.95 | 8.99 |  | 4.50 | * |
| 8 | " | 1 | Plastic shower curtain | " | " | July 1970 | 2.50 | 3.00 |  | 1.80 | * |
| 9 | " | 4 | Bars bath size ivory soap (unopened) | " | " | 1972 | .60 | .60 |  | .60 |  |
| 10 | " | 3 | Sets queen size permanent press percale sheets | " | " | 1970-1971 | 36.00 | 41.34 |  | 28.94 | * |
| 11 | " | 1 | Rubber ducky | " | " | 1971 | .59 | .59 |  | .30 | * |
|  |  |  |  |  |  |  |  |  |  | $206.20 |  |

* Normal Depreciation Taken.

** Reduced due to preexisting damage included in repair cost.

DD FORM 1 JAN 72 1845 REPLACES DA FORM 1089-1, WHICH IS OBSOLETE

192.100

Figure 13-8.—DD Form 1845—Schedule of Property.

## Specific Classes Of Claims

Claims of the following types should be accompanied by the specific and detailed evidence listed below:

- For property losses in quarters or other authorized places, a statement indicating:

  (1) Geographical location;
  (2) Whether quarters were assigned or provided in kind by the Government;
  (3) Whether quarters were regularly occupied by the claimant;
  (4) Name of authority, if any, who designated the place of storage of the property, if other than quarters;
  (5) Measures taken to protect the property; and
  (6) If claimant is a civilian employee, a statement from the competent authority establishing that when the claim arose the claimant was a civilian employee of the Navy, and was, or was not, a local inhabitant.

- For theft, a statement indicating:

  (1) Geographical area of the loss;
  (2) Facts and circumstances surrounding the loss, including evidences of larceny, burglary, or housebreaking (e.g., evidence of breaking and entering, capture of the thief, recovery of part of the stolen goods); and
  (3) Evidence that the claimant exercised due care in protecting this property prior to the loss. Attention must be given to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

- For transportation losses:

  (1) Copy of orders authorizing the travel, transportation, or shipment, or in lieu thereof a certificate explaining the absence of orders and stating their substance;
  (2) All bills of lading and inventories of property shipped;
  (3) Copy of demand on carrier, contractor, and/or insurer, and any reply or replies;
  (4) In case of missing baggage, a statement indicating action taken to locate the missing property, with related correspondence; and
  (5) Where property was turned over to a quartermaster, transportation officer, supply officer, or contract packer, a statement indicating:

    (a) Name (or designation) and address of quartermaster, transportation officer, supply officer, or contract packer,
    (b) Date property was turned over,
    (c) Condition when property was turned over,
    (d) When and where property was packed, and by whom,
    (e) Date of shipment and re-shipment,
    (f) Copies of all manifests, bills of lading, and contracts,
    (g) Date and place of delivery to claimant,
    (h) Date property was unpacked,
    (i) Statements of disinterested witnesses as to condition of property when received and delivered, or as to handling or storage
    (j) Whether the negligence of any Government employee acting within the scope of his employment caused the damage or loss, and
    (k) Whether the last common carrier or local civilian carrier was given a clear receipt.

- For marine or aircraft disaster, a copy of orders or other evidence to establish a claimant's right to be on board and/or to have his property on board.

- For enemy action, public disaster, or public service:

  (1) Copy of orders or other evidence establishing claimant's required presence in the area involved; and

(2) A detailed statement of facts and circumstances showing applicable causes enumerated in *JAGMAN* Chapter 21, Section 2103(d) and (e).

- For property used for benefit of Government:

(1) A statement from proper authority that the claim was for property which was required to be supplied by the claimant in the performance of his official duty or occupation at the request or direction of superior authority, or by reason of military necessity; and
(2) Evidence that, if the property being used for the benefit of the Government was lost while not in use, the loss occurred in an authorized storage area.

- From money deposited for safekeeping, transmittal, or other authorized disposition:

(1) Name, grade, social security number, and address of the person (or persons) who received the money and of other persons involved;
(2) The name, and designation of the authority who authorized such person or persons to accept personal funds, and the disposition requested; and
(3) Receipts and written sworn statements explaining the failure to account for the funds or to return such funds to the claimant.

## FILING OF CLAIMS

All claims coming under the cognizance of the Military Personnel and Civilian Employees Claims Act, if practicable, should be submitted by the claimant or his authorized agent to the commanding officer or officer in charge of the activity, installation, or unit nearest to the point of delivery of the goods and where investigation of the facts and circumstances could be conveniently made. An alternative is to permit submission to the installation or unit to which the claimant is attached. Acceptance of the claim must not be refused even though it could be more conveniently handled by another activity or the claim does not appear to be within the scope of this act. Claims made by civilian employees, members of another Armed Force, veterans, or on behalf of a deceased person are accepted. Army and Air Force claims are to be investigated and processed right up to the point of adjudication and then forwarded to the appropriate service's adjudicating authority.

## APPOINTMENT OF CLAIMS INVESTIGATING OFFICERS

The commanding officer appoints one or more claims investigating officers to investigate, process and make recommendations on claims for personal losses submitted under this Act. Major commands and commands processing an appreciable number of claims may within the discretion of the commanding officer appoint additional claims investigating officers on a continuing basis (e.g., as at commands which receive a large number of household goods shipments).

It is a generally accepted fact that any article of property possessed by an individual is held in high esteem by that person. Some of these articles are of high sentimental value, while others may be works of art and craftsmanship. Therefore, the importance of the claims investigating officer cannot be over emphasized. The claimant has made a large investment in his personal property which is a necessary part of his everyday life and if he, as your fellow "Navy Citizen," is to receive a fair and equitable resolution of his claim for damage to or loss of that property, the diligence of the claims investigating officer is crucial. It is your job to lend him the necessary assistance to assure the success of his efforts on behalf of those Navy personnel who seek redress for their losses.

## TRANSPORTATION LOSSES

In processing claims of losses in transportation the investigating officer should take the following actions:

- Filing of concurrent claims against carriers, contractors, insurers.

It is the claims investigating officer's duty to submit a claim against the appropriate carrier, contractor and/or insurer in cases when claims against the Government under this Act for losses or damage to personal effects in transit are received.

- Concurrent claims against carriers, contractors, and insurers.

The claimant must provide the claims investigating officer with all the information essential to a settlement of the claim against the carrier. In turn, the officer must indicate that he will monitor the claim to final settlement. The claimant must notify the claims investigating officer promptly of any communication received from the carrier, contractor, or insurer, particularly if it involves settlement, partial settlement, or denial of the claim.

- Approval or denial of concurrent claim by carrier, contractor, or insurer.

The claims investigating officer must report any denial of a claim by a carrier, contractor, or insurer to the command where the claim has been forwarded for adjudication. Upon receipt of a settlement from a carrier, contractor, or insurer the claims investigating officer must determine if the offered settlement is sufficient when weighed against the contractural liability asserted against the carrier. He then forwards the settlement to the adjudicating authority. The authority reviews the settlement and forwards it for deposit to the appropriate account. If the claim filed with the Government has been forwarded to the adjudicating authority and the recovery received from the carrier, contractor, or insurer is considered to be sufficient, then the claims investigating officer should advise the claimant to accept the award; notification of the adjudicating authority is required (for suggested format see fig. 13-9).

[illegible] the claimant has already received full payment from the Government, he pays the proceeds received from the carrier, contractor and/or insurer to the United States by endorsing the check to the Treasurer of the United States and delivering it to the command or to the claims investigating officer. If the amount to be refunded to the Government is less than amount received, the claimant may remit the balance by personal check payable to Treasurer of the United States.

## PREPARATION OF CLAIMS INVESTIGATING OFFICER'S REPORT

As the central figure in providing swift resolution of claims for the personal losses of members of the naval service, the claims investigating officer is required to prepare a report on each claim submission. The report in large measure determines whether the claimant ultimately receives recompense for his loss.

### General

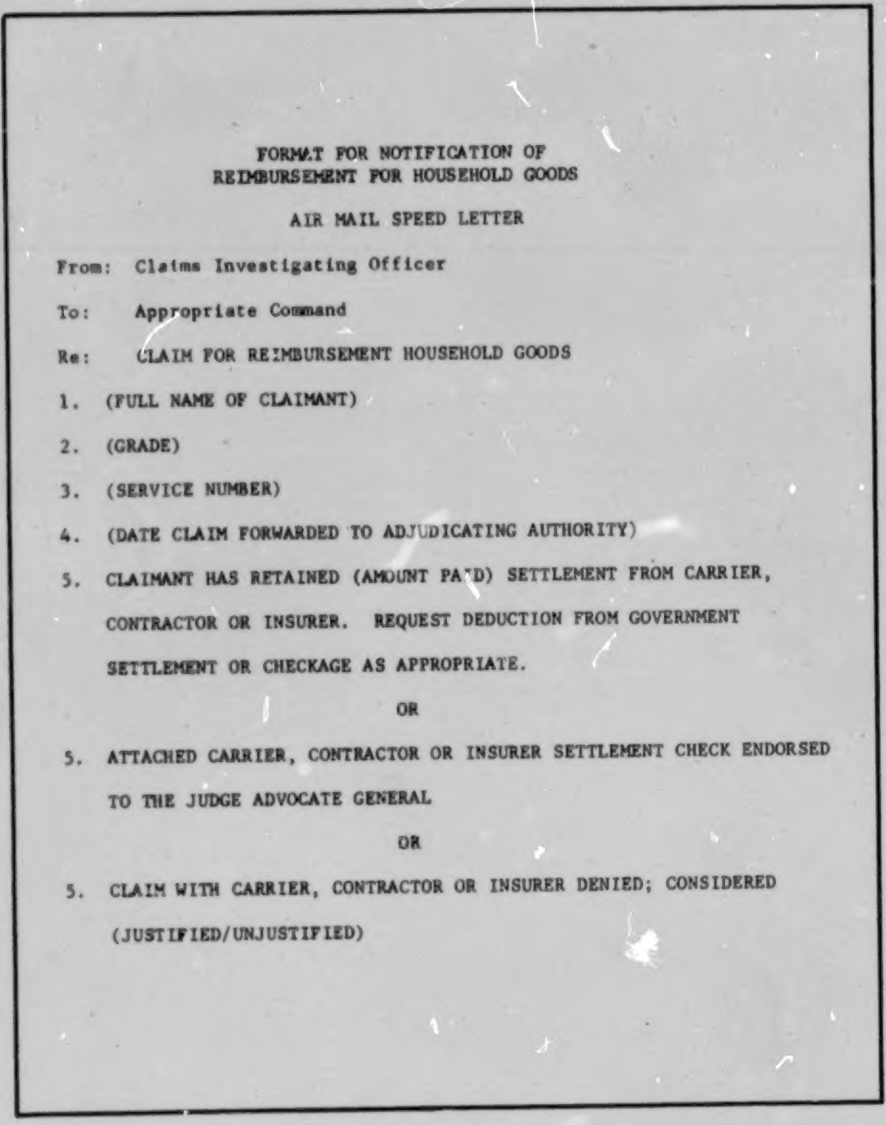
The claims investigating officer prepares a written report of investigation including his recommendations. Sufficient copies must be prepared so that the original and two copies may be forwarded to the appropriate adjudicating authority and one retained at the command. The claims investigating officer may at his descretion use DD Form 1844 (see fig. 13-10) as appropriate and attach a copy to his report.

### Claims Arising From The Same Incident

A separate report must be prepared on each claim filed. However, where separate claims arise from the same incident, the claims investigating officer may avoid duplication of effort by completing one detailed report of investigation with all necessary exhibits and documents.

## ACTION BY CO

The commanding officer normally functions as an intermediary tasked with the responsibility for reviewing and assuring the completeness and accuracy of the report of his appointed claims investigating officer. He may do this personally or through a delegated representative. The commanding officer must specify by endorsement to the claims investigating officer's report his approval or indicate his exceptions thereto.



FORMAT FOR NOTIFICATION OF
REIMBURSEMENT FOR HOUSEHOLD GOODS

AIR MAIL SPEED LETTER

From: Claims Investigating Officer

To: Appropriate Command

Re: CLAIM FOR REIMBURSEMENT HOUSEHOLD GOODS

1. (FULL NAME OF CLAIMANT)

2. (GRADE)

3. (SERVICE NUMBER)

4. (DATE CLAIM FORWARDED TO ADJUDICATING AUTHORITY)

5. CLAIMANT HAS RETAINED (AMOUNT PAID) SETTLEMENT FROM CARRIER, CONTRACTOR OR INSURER. REQUEST DEDUCTION FROM GOVERNMENT SETTLEMENT OR CHECKAGE AS APPROPRIATE.

OR

5. ATTACHED CARRIER, CONTRACTOR OR INSURER SETTLEMENT CHECK ENDORSED TO THE JUDGE ADVOCATE GENERAL

OR

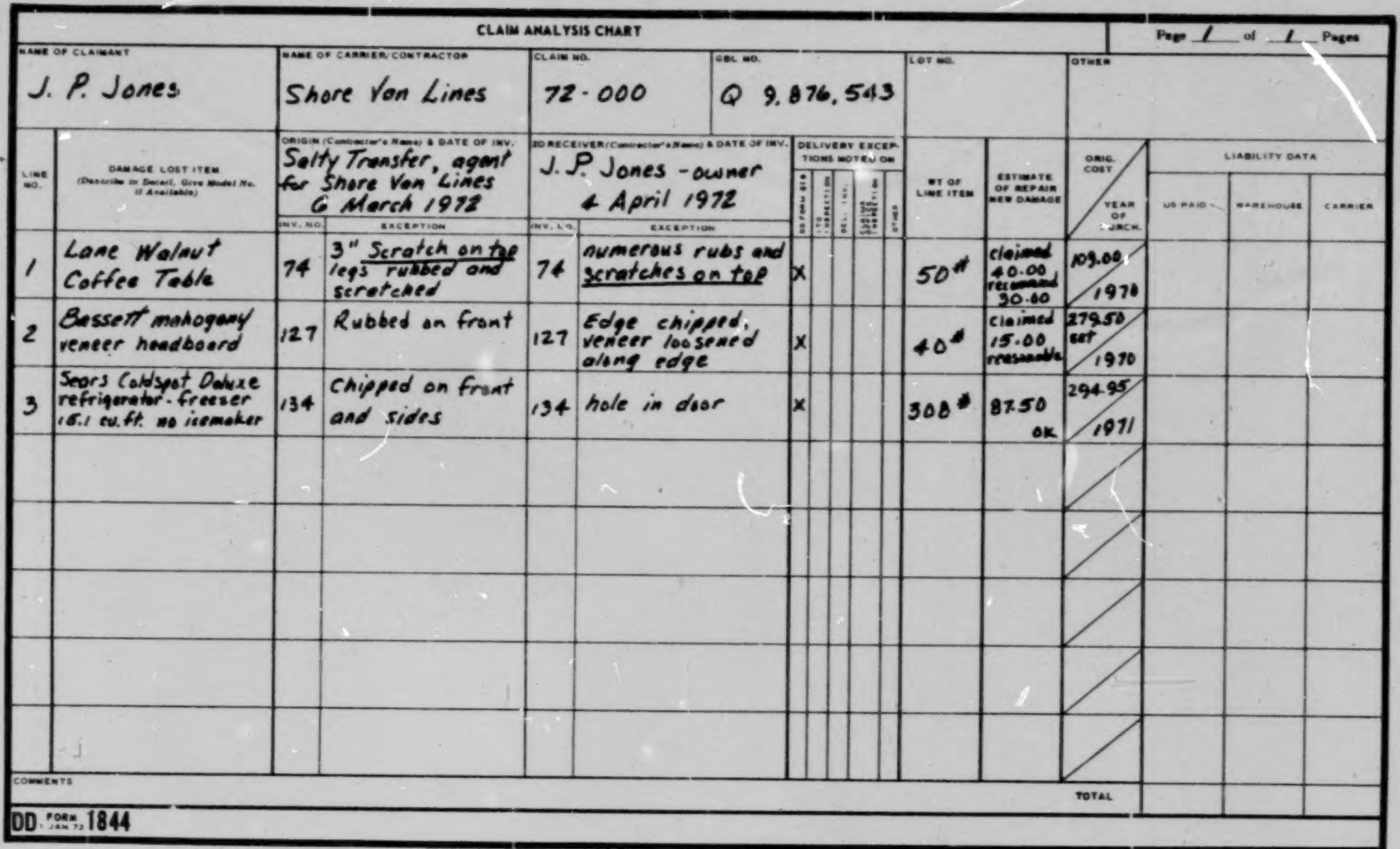
5. CLAIM WITH CARRIER, CONTRACTOR OR INSURER DENIED; CONSIDERED (JUSTIFIED/UNJUSTIFIED)

192.101

Figure 13-9.—Format for Notification of Reimbursement for Household Goods.

### Examination and Approval of Report

The commanding officer or the chief of staff, chief staff officer, executive officer or judge advocate acting as the commanding officer's representative may review the investigative report. The duties of review of the file require a determination that it is complete, whether the facts and evidence are clearly stated and whether the recommendations of the investigating officer are supported by adequate evidence. Where necessary, he may refer the file back to the investigating officer for further investigation and additional data. As discussed above, the results of the review are appended to



CLAIM ANALYSIS CHART

Page 1 of 1 Pages

NAME OF CLAIMANT: J. P. Jones

NAME OF CARRIER/CONTRACTOR: Shore Van Lines

CLAIM NO.: 72-000

GBL NO.: Q 9,876,543

LOT NO.:

OTHER:

| LINE NO. | DAMAGE LOST ITEM (Describe in Detail, Give Model No. if Available) | ORIGIN (Contractor's Name) & DATE OF INV.: Salty Transfer, agent for Shore Van Lines 6 March 1972 |  | DD RECEIVER (Contractor's Name) & DATE OF INV.: J. P. Jones - owner 4 April 1972 |  | DELIVERY EXCEPTIONS NOTED ON |  |  |  |  | WT OF LINE ITEM | ESTIMATE OF REPAIR NEW DAMAGE | ORIG. COST / YEAR OF PURCH. | LIABILITY DATA |  |  |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
|  |  | INV. NO. | EXCEPTION | INV. NO. | EXCEPTION | DD FORM 619 | [illegible] | DEL. INV. | [illegible] | OTHER |  |  |  | US PAID | WAREHOUSE | CARRIER |
| 1 | Lane Walnut Coffee Table | 74 | 3" Scratch on top legs rubbed and scratched | 74 | numerous rubs and scratches on top | X |  |  |  |  | 50# | claimed 40.00 recommend 30.00 | 109.00 / 1970 |  |  |  |
| 2 | Bassett mahogany veneer headboard | 127 | Rubbed on front | 127 | Edge chipped, veneer loosened along edge | X |  |  |  |  | 40# | claimed 15.00 reasonable | 279.50 set / 1970 |  |  |  |
| 3 | Sears Coldspot Deluxe refrigerator-freezer 16.1 cu.ft. no icemaker | 134 | Chipped on front and sides | 134 | hole in door | X |  |  |  |  | 308# | 87.50 OK | 294.95 / 1971 |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
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|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| COMMENTS |  |  |  |  |  |  |  |  |  |  |  |  | TOTAL |  |  |  |

DD FORM 1 JAN 72 1844

192.102

Figure 13-10.—DD Form 1844—Claim Analysis Chart.

the investigative report by endorsement. The endorsement must express an opinion as to whether the possession of the property by the claimant was reasonable, useful, or proper under the circumstances.

### Statement Concerning Replacement in Kind

The first endorsement of the investigative report must include a statement that no replacement in kind (replacement of the item with one of corresponding and equivalent value) was made or if replacement in kind was made, a list of the items supplied to the claimant with the prices of each of the items tendered. The statement is not necessary when replacement in kind is made for all items claimed.

### Forwarding of Claim

If a replacement in kind is made, the report need not be forwarded beyond the officer making the authorization. In all other cases the officer's report must be forwarded in triplicate, including the original and two copies of the claim plus one copy of each supporting document or paper, by endorsement to the command authorized to adjudicate the claim.

## ADJUDICATING AUTHORITY ACTION

The adjudicating authority ultimately will be that officer or command authorized to render final judgement on a claim.

### Claims By Naval Personnel

Section 2124.a. of the *JAG Manual* authorizes payment of personnel claims up to $10,000.00 by the following:

- The Judge Advocate General
- The Deputy Judge Advocate General
- Any Assistant Judge Advocate General
- The Deputy Assistant Judge Advocate General (Litigation & Claims)
- Director, Litigation and Claims Division
- Head, Personnel Claims Branch, Litigation and Claims Division
- Head, Operational Claims and Litigation Branch
- Commandants of Naval Districts and their Staff Judge Advocates
- Directors of Law Centers and Staff Judge Advocates attached to Law Centers when designated by the Director
- Other Navy Judge Advocates when designated by the JAG

The Naval Supply Center, Oakland, California, Staff Judge Advocate is authorized under the same section to authorize payment of claims up to $5,000.00.

In addition to the above, all Navy judge advocates are authorized to adjudicate and authorize payment of claims up to $1,000.00 filed under Chapter XXI of the *JAG Manual*. Any naval officer, when personally designated by the Judge Advocate General, may adjudicate and authorize payment of claims up to $500.00 filed under Chapter XXI. The exercise of adjudicating authority is conditioned upon receipt of funding authority and accounting data from the Judge Advocate General, Washington, D.C.

### Claims by Nonappropriated Fund Employees

Claims by employees of nonappropriated fund activities for loss, damage or destruction of their personal property incident to their employment are processed and adjudicated in accordance with this Act and then forwarded to the nonappropriated fund activities for payment from such activity's funds.

### Partial Payment When Hardship Exists

When a hardship of significant magnitude occurs as a result of loss, damage to, or destruction of personal property, which places the claimant in a situation where he cannot feed, clothe, or house his family properly, the Judge Advocate General may authorize partial payment on a claim up to $5000; any adjudicating authority authorized to adjudicate claims up to $5000 may authorize partial payment up to $2000 and any other adjudicating authority, with the specific approval of a $5000 adjudicating authority or the Judge Advocate General, may authorize a partial payment up to $500. (See *JAGMAN* Chapter XXI, Section 2124 (d) (1-3) for the documents needed in support of a request for partial payment.)

### Replacement In Kind

Officers in the grade of lieutenant commander or higher, who are commanding officers or in higher echelons of command, including the officers specified under the heading, "Claims by Naval Personnel" above, or who are Senior Officers Present are authorized to consider, ascertain, adjust, and determine the respective claims of Navy or Marine Corps enlisted personnel for replacement in kind under this *Act*. In certain cases, officers below the grade of major in the Marine Corps are authorized to determine which claims will be settled by replacement in kind. Replacement in kind may also be exercised by such other officers as are designated by the Secretary of the Navy.

### Payments And Collections

Payment of approved personnel claims and deposit of checks received from carriers, contractors or insurers or members is made by the Navy or Marine Corps disbursing officer serving the adjudicatory authority.

### Reports

Commands adjudicating personnel claims must forward reports to the Judge Advocate General on the last day of any calendar month when the number of personnel claims pending adjudication on that date exceeds one-third of the number of claims adjudicated during the reporting month. See *JAGMAN*, Section 2124 for the information to be included in this report.

## SEPARATION FROM SERVICE OF A CLAIMANT

Separation from service of military personnel or termination of employment of civilian personnel does not act as a bar to the filing of claims or bar the adjudicating authority from determining the merit of claims and authorizing their payment when such claims accrued prior to separation or termination.

## FOREIGN CLAIMS REGULATIONS

The foreign claims regulations pertain solely to claims against the Government arising outside the United States and made by inhabitants of a foreign country.

## STATUTORY AUTHORITY

The Foreign Claims Act (10 USC 2734) is the statutory authority which authorizes settlement of foreign claims under the foreign claims regulations.

You are cautioned that not all foreign claims are to be immediately referred to foreign claims commissions for adjudication because the United States has concluded agreements with certain foreign countries (e.g., the NATO Status of Forces Agreement). Certain of these agreements have provisions which are inconsistent with the unrestricted use of Foreign Claims Act and its implementing regulations. Accordingly, directives of the cognizant area commander must be consulted and claims are not referred to foreign claims commissions until it has been determined that such action is consistent with the provisions of any international agreements affecting the United States.

### General

Claims for personal injury to, or death of any inhabitant of a foreign country or damage to, or loss of real or personal property of a foreign country, political subdivision, or inhabitant of a foreign country, occurring outside the United States, its territories, commonwealths, or possessions and caused by its military forces or individual members thereof (whether military personnel or civilian employees) or otherwise incident to noncombat activities of such forces are within the scope of the Foreign Claims Act (10 USC 2734).

### Purpose

The purpose of this Act is to promote and maintain friendly relations in foreign countries through the prompt settlement of meritorious claims.

## TERRITORIAL APPLICATION

The provisions of the foreign claims regulations are applicable to claims arising outside the United States, its territories, commonwealths, or possessions. The fact that a claim arises at a place, within a foreign country, under the temporary or permanent jurisdiction of the United States does not preclude consideration of such a claim which would otherwise be within the purview of the Foreign Claims Act.

## CRIMINAL ACTS

The fact that the act giving rise to the claim may constitute a crime does not affect relief. Claims, otherwise within the Foreign Claims Act, may be allowed regardless of whether the act of the military member or civilian employee of the United States which caused the damage, injury, or death was a crime or other wrongful act, or negligence, or mere error of judgment.

## ACTS NOT WITHIN SCOPE OF EMPLOYMENT

The doctrine of employment has no application to foreign claims arising from the acts of military personnel and other-than-indigenous civilian personnel. Foreign claims arising from the acts of indigenous civilian personnel may be allowed only if such employee was acting within the scope of his employment, unless, and only to the extent that, an employer or owner of the property involved would be held liable under local law under the circumstances.

## ELEMENTS OF DAMAGE IN CASE OF PERSONAL INJURY OR DEATH

Actual and reasonable medical and hospital expenses, and reasonable compensation for pain and suffering and loss of earning capacity may be paid in cases of personal injury. If death results, actual and reasonable burial expenses and reasonable compensation for loss of prospective support may also be allowed. Claims of dependents for loss of prospective support are allowable only if such claims are recognized by the law of the country where the injury occurred. In computing damages in cases of personal injury or death, local standards are taken into consideration as the controlling factor. In case of death, only one claim is considered. In such a case the amount approved will be apportioned among the beneficiaries in the proportions prescribed by the law or customs of the place where the accident or incident occurred to the extent that it is practicable or feasible.

## PERSONS EXCLUDED AS CLAIMANTS

The following classes of claimants listed below are excluded from eligibility to submit claims under the Foreign Claims Act.

### Inhabitants Of The United States

Members and civilian employees of the Armed Forces of the United States and their dependents who are inhabitants of the United States and who are in a foreign country primarily because of their sponsors' or their own military orders are ineligible to submit Foreign Claims.

### Enemy Aliens

Nationals of a country at war with the United States, or any ally of such an enemy country, except as the Foreign Claims Commission considering the claim or the local military commander determines that the claimant is friendly to the United States.

## CLAIMS EXCLUDED

The following classes of claims are excluded from the purview of the Foreign Claims Act:

- claims entirely contractual in character;
- private contractual and domestic obligations of individual military personnel or civilian employees;
- claims based solely on compassionate grounds;

- bastardy claims;
- patent infringement claims.

## COMBAT ACTIVITIES

Claims for damage to or loss of or destruction of property or for personal injury or death resulting from action by the enemy, or resulting directly or indirectly from any act by armed forces engaged in combat, are not payable under the Foreign Claims Act. The sole exception to the exclusion of claims incident to combat activities occurs where a military aircraft based in a foreign country and while proceeding to or returning from a combat mission causes personal injury or death or damage to the property of an inhabitant of a foreign country, either through an accident involving such military aircraft or a malfunction of such military aircraft or the discharge of its ordnance.

## STATUTE OF LIMITATIONS

A claim may be allowed under the Foreign Claims Act only if presented within two years after it accrued. A claim presented to a foreign government under applicable treaty or agreement within this time limit satisfies this requirement.

## FOREIGN CLAIMS COMMISSION

Claims arising in foreign countries are settled by foreign claims commissions. The normal practice is to install a single service commission, i.e., one branch of the Armed Forces will have the responsibility for processing claims in a particular foreign country or area.

### Appointing Authority

All Navy commanding officers are granted the authority to appoint Foreign Claims Commissions. All Marine Corps commanding officers are granted authority to appoint Foreign Claims Commissions, provided a member of the Judge Advocate General's Corps or a Judge Advocate of the Marine Corps is appointed to the commission. All claims which are presented to Marine Corps commands which do not have a member of the Judge Advocate General's Corps or a Judge Advocate of the Marine Corps attached must be forwarded to the nearest Navy or Marine Corps command with an active Foreign Claims Commission. (See the *JAG Manual*, Chapter XXII Section 2214 for a list of activities considered as commanding officers solely for the purposes of this Act). Commissions may be appointed to consider each claim as presented or one commission constituting a standing claim commission may be appointed to consider all claims presented. The commanding officer to whom a claim is presented refers the claim to such a commission.

### Composition of Commissions

The authority of Commissions varies according to their size and composition. See the *JAG Manual*, Section 2218 for details.

### Appeals and Reconsiderations

There is no right to appeal from the action of a Foreign Claims Commission, but the commission may reconsider its action upon written request of the claimant or on its own initiative. If, after reconsideration, the commission again denies a claim, or the claimant declines to accept an award in full satisfaction of his claim, the commission's report must be forwarded to the Judge Advocate General. The Judge Advocate General may refer claims for reconsideration to the original commission, a successor commission or a commission convened by the Judge Advocate General.

## MEMBERSHIP OF COMMISSIONS

Foreign Claims Commissions must consist of one or three commissioned officers of the Navy or Marine Corps whose grades and experience are commensurate with the responsibilities to be executed in carrying out the purposes of the Foreign Claims Act.

## REPORT OF PROCEEDINGS

The commission is required to make a written report of the proceedings conducted. The report must include the following:

- A copy of the appointing order creating the commission,
- The claim document,
- The dates of the proceedings,
- The amount claimed stated in the indigenous currency and the conversion into United States currency at the existing official rate of exchange on the date of initial consideration of the claim,
- A brief summary of the facts, including the date of incident giving rise to the claim, the date the claim was filed, the nature and extent of the damages or injuries, and the necessary jurisdictional facts,
- Signed statements of material witnesses or transcripts of their oral testimony for claims in excess of the commission's authority,
- An evaluation of applicable local laws and customs,
- The date the commission reached its final determination,
- The amount awarded, or recommended to be awarded, stated in the indigenous currency and the conversion into United States currency at the existing official rate of exchange on the date of final determination,
- An explanation of the basis of any recommendation in excess of the commission's authority,
- A release from the claimant when an award has been accepted or a copy of the notice of the denial of the claim when such claim has been disallowed. (Releases are discussed in detail below).

When the commission has approved a claim which is within its final adjudicating authority, the original of the report and all allied papers must be submitted to the appointing authority.

When the commission recommends approval of a claim in excess of its adjudicating authority, a legible copy of the report and all allied papers must be forwarded to the Judge Advocate General. The commission should retain the original of all papers for its files.

When the commission has disallowed for any reason a claim within its final adjudicating authority or has recommended disallowance of a claim in excess of its final adjudicating authority, the original and one copy of the report and all allied papers must be forwarded to the Judge Advocate General. The commission should retain one copy for its files. The commission's report must not be released or shown to the claimant without the express consent of the Judge Advocate General.

## NOTIFICATION AND AWARD OF PAYMENT

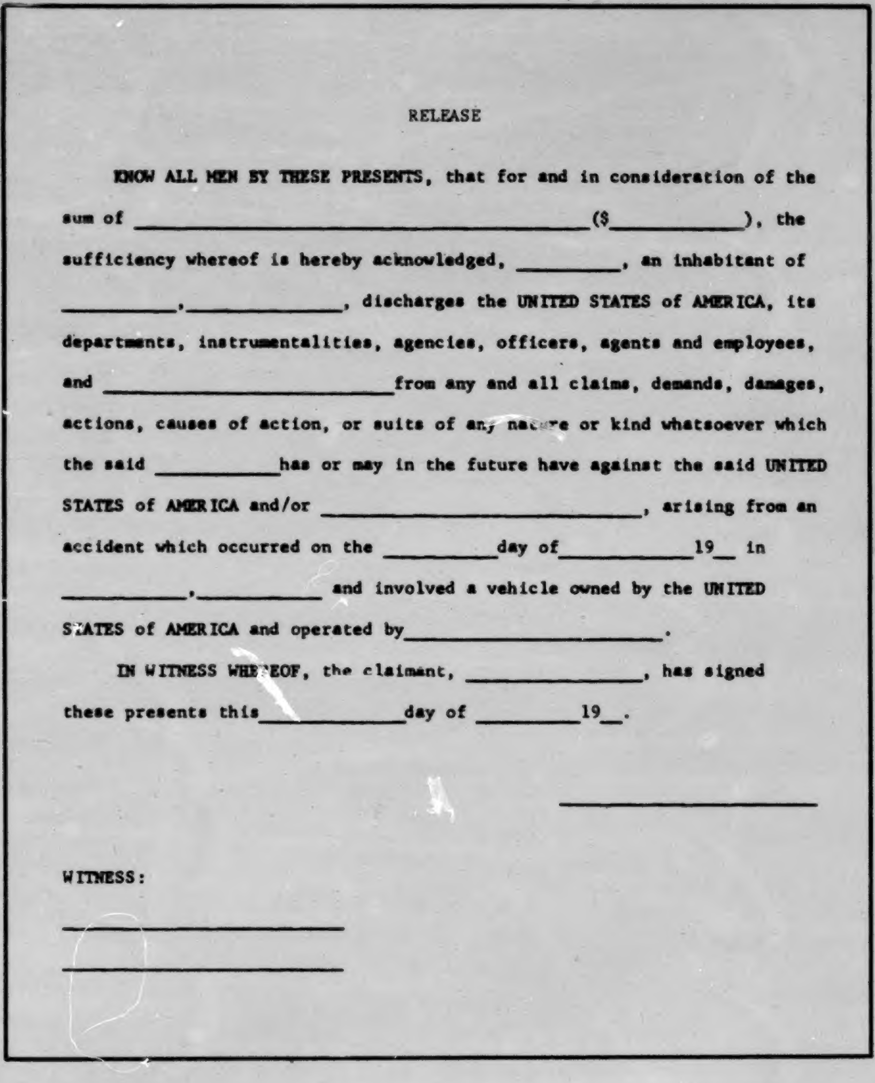
When a claim is deemed meritorious and is within the authority of the commission to pay or a larger award has been approved by the Judge Advocate General, the claimant must be notified. If a commission approves an award in excess of its authority, it may notify the claimant its recommendation has been forwarded to the Judge Advocate General for final review, but in no case may it advise the claimant of the amount of the recommendation.

## RELEASES

A release is the relinquishment, concession, or giving up of a right, claim, or privilege by the person in whom it exists or to whom it accrues, to the person against whom it might have been demanded or enforced. A release must be obtained from the claimant in every case in which an award is accepted. The release executed by the claimant should release the United States and also release the tort-feasor (i.e., a wrong-doer; one who commits or is guilty of a tort) or the persons who have occasioned the damage, injury, or death, if their indentity is known. If the identity of such persons is unknown, the release should recite that the claimant also releases the person or persons who occasioned the damage, injury, or death, the names and identity of said person or persons being unknown to the claimant. The release should preclude any possible future assertion of the claim for which the United States has made compensation. (For a suggested release form see fig. 13-11.)

## ADVANCE PAYMENTS

Advance payments were cursorily referred to earlier in this chapter during a discussion of the Military Claims Act (10 USC 2733).



RELEASE

KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the sum of ________________________________________($__________), the sufficiency whereof is hereby acknowledged, __________, an inhabitant of __________, ______________, discharges the UNITED STATES of AMERICA, its departments, instrumentalities, agencies, officers, agents and employees, and ___________________________from any and all claims, demands, damages, actions, causes of action, or suits of any nature or kind whatsoever which the said ___________has or may in the future have against the said UNITED STATES of AMERICA and/or ______________________________, arising from an accident which occurred on the __________day of____________19__ in __________,__________ and involved a vehicle owned by the UNITED STATES of AMERICA and operated by________________________.

IN WITNESS WHEREOF, the claimant, ________________, has signed these presents this_____________day of _________19__.

________________________

WITNESS:

__________________________

__________________________

192.103

Figure 13-11.—Release.

A general discussion of advance payments follows to provide you a fuller understanding of those occasions when advance payments are permissible.

The general statutory authority under which advance payments may be tendered is *Title 10 U.S.C.* 2736 which authorizes the Secretary of the Navy or his designee to pay an amount not in excess of $1000. Such advances may be payable on claims submissions of persons or on behalf of persons by their legal representatives, where such persons have been killed or injured or have had their property damaged or lost, as a result of an accident for which allowance of a claim is authorized by law. Payments in advance are limited to those claims which may arise under either the Military Claims Act (10 USC 2733) or the Foreign Claims Act (10 USC

2734). Advance payments are not to be construed as an admission by the United States of liability. Any amount paid in advance is to be deducted from any award later decided upon as payable by the Government.

## NONAPPROPRIATED FUND ACTIVITY CLAIMS

Nonappropriated fund activities are those activities not sustained by allocations from the general Navy fund, which was appropriated by legislative enactment, (e.g., Navy flying clubs and special services recreational activities are examples of nonappropriated fund activities). Claims against certain nonappropriated fund activities are viable and may be presented in limited cases as explained below.

### GENERAL

Nonappropriated fund activities are Federal agencies within the meaning of the Federal Tort Claims Act when that activity is charged with an essential function of the Navy Department and the degree of control of the Navy Department over it is more than casual or perfunctory. Additionally, you should recall that sovereign immunity (preclusion of right to sue the Government) has been waived under the Federal Tort Claims Act only to a limited extent, and, to the extent that it has been waived, the United States remains ultimately liable for payment of nonappropriated fund activity claims.

These claims are normally paid from nonappropriated funds and are processed primarily through nonappropriated fund activity claims procedures, while using the regulations and statutes applicable to similar appropriated-fund activities as guidelines.

Investigations of nonappropriated fund activity claims must be in accordance with the general investigative procedures explained in this chapter. All claims should be submitted to the command having cognizance for the nonappropriated fund activity.

### INSURANCE

Many nonappropriated fund activities carry commercial insurance to protect them from claims for property damage and personal injury attributable to their operations. The Commandant of the Marine Corps, the Chief of Naval Personnel and the Naval Supply Systems Command determine whether nonappropriated fund activities within their cognizance shall carry liability insurance or become self insurers (i.e., the activity underwrites its own losses rather than contracting with an insurance company to underwrite losses), in whole or in part. When the operations of a nonappropriated fund activity result in personal injury or property damage, the insurer, if any, must be notified immediately. Notification should not be delayed until a claim is filed.

### SETTLEMENT BY INSURER

The primary responsibility for negotiating and settling nonappropriated fund activity claims normally rests with the activity or its insurer. If the activity is insured the insurer will usually conduct the negotiations with claimants. The appropriate adjudicatory authority should monitor the negotiations to ascertain that someone has been assigned to negotiate, and the adjudicatory authority should obtain periodic status reports of the proceedings and ultimately close out files on settled claims.

Where the activity does not have an insurer and has made no arrangements for negotiations or where the insurer does not desire to conduct negotiations, the adjudicatory authority may carry out the negotiations. In any of these cases, the adjudicatory authority should secure the approval of the command involved and/or the insurer prior to starting negotiations. When an award has been settled upon by the adjudicatory authority it is to be forwarded to the nonappropriated fund activity or the insurer for payment.

In a limited number of cases claims may be paid out of appropriated funds or referred to the Judge Advocate General for appropriate action. Such payments could be authorized in situations where the operations of nonappropriated fund activities are not negligent nor is the activity or its insurer legally liable but, if such payments are to be made, they must necessarily have a basis under a specific statutory authority (e.g., Foreign Claims Act).

Claims resulting from nonappropriated fund activities may be denied only by the appropriate Naval adjudicatory authority, since such a denial is necessary to begin the six months limitation on filing a suit under the Federal Tort Claims Act. Claims that have initially been processed and negotiated by a nonappropriated fund activity or its insurer should not be denied until the activity or its insurer has clearly stated in writing that it does not intend to pay the claim and has elected to defend in court.

## PAYMENT OF CLAIMS

In a broad sense payment is the fulfillment of a promise or the performance of an agreement. In a more restricted sense as in the claims settlement area, payment is the performance of a duty or discharge of a liability; herein, liability which has arisen as a result of some action of the Government or its civilian or military personnel.

### No Insurance Carried or Insurance Coverage Denied

Any nonappropriated fund activity claims not covered by insurance (or if covered and not paid by the insurer) which can be settled for $100 or less may be adjudicated by the commanding officer of the activity concerned or his designee. The claim is paid out of funds available to the commanding officer.

Claims in excess of $100, for which private insurance is not available and which have been negotiated by the Navy, must be forwarded to the appropriate headquarters command for payment from nonappropriated funds. Private insurance is generally not available to cover losses which result from some act or omission of a mere participant in a nonappropriated fund activity. In the event the nonappropriated fund activity declines to pay the claim, the file is forwarded to the Judge Advocate General for determination.

### Settlement Under International Agreement

When a nonappropriated fund activity has neglected to obtain insurance coverage or make other arrangements, claims for personal injury or death of foreign nationals employed outside the Continental United States, is processed as a foreign claim or a Federal Tort Claims Act claim if appropriate and the award must be paid out of nonappropriated funds.

## MEDICAL CARE RECOVERY ACT CLAIMS

The Federal Medical Care Recovery Act (42 USC 2651-53) is one of two statutes which authorize the assertion of affirmative claims. An affirmative claim is one made by the Government against another party for or on its own behalf. In the introduction to this chapter, claims were described as being divided into two broad categories: those asserted against the Government and those brought on behalf of the Government. This Act is one of the vehicles through which the Government is able to pursue its claims against third parties and ultimately resort to litigation, when the initial methods attempted to achieve settlement prove unsatisfactory.

## STATUTORY AUTHORITY

The Federal Medical Care Recovery Act (42 USC 2651-53) is the statutory authority under which the United States has the right to recover the reasonable value of medical care furnished or to be furnished an injured member of the Armed Forces resulting from an incident caused by the negligent or wrongful act of a third party. The Government's right to recover coincides with the right of the injured party to recover damages from a prospective defendant. The Government's right to recover is limited to: the amount expended or to be expended by the military for medical care furnished by other federal sources, or the amount determined by the rates set by the Director of the Bureau of the Budget for medical care furnished by military or Federal sources.

## DEFINITIONS

In dealing with affirmative claims under this Act you will need to familiarize yourself with the following definitions:

- Medical Care. "Medical care" includes hospital, medical, surgical, or dental care and treatment, and the furnishing of prostheses and medical appliances.

- JAG designees. "JAG designees" are:

1. The Deputy Judge Advocate General; any Assistant Judge Advocate General; the Deputy Assistant Judge Advocate General (Litigation and Claims); the Director, Litigation and Claims Division;
2. The commandants of all naval districts and their district judge advocates;
3. The officers in command and the directors of all Navy law centers outside the United States, except for law centers in countries where another service has single-service responsibility;
4. The officers in charge of U.S. Sending State Offices; and
5. Such other officers as may be designated by the Judge Advocate General.

- *Action JAG designees.* "Action JAG designees" are the JAG designees in whose area the incident giving rise to the claim occurred. This is a general definition and should not be considered applicable in cases where the best interests of the Government would be served by transferring the case to another JAG designee, *e.g.*, where the tortfeasor has moved from or resides in a place other than the place where the incident occurred. When a case is transferred from one JAG designee to another, the responsibility for conducting an investigation and making an initial assertion remains with the JAG designee in whose area the incident giving rise to the claim occurred.

- *The Act.* "The Act" means the Medical Care Recovery Act (42 USC 2651-53).

- *Waiver.* "Waiver" means the total relinquishment of the Government's claim.

- *Compromise.* "Compromise" means a partial reduction in the amount of the Government's claim.

### Assertion Of Claim

When the Department of the Navy furnishes medical care, the Judge Advocate General or the action JAG designee must determine: whether a third-party claim (i.e., a claim under the Act) is possible against a person who is legally liable for causing the injury or disease treated, and whether a Government claim is possible under workmen's compensation, no-fault or medical-payments insurance (e.g., in all automobile accident cases). If either circumstance exists, the action JAG designee must assert a claim for the reasonable value of such care and treatment. When an accident occurs at a place where the naval service does not have a command, unit, or activity conveniently located for conducting an investigation, the commanding officer or officer-in-charge having immediate responsibility for making the investigation may request assistance from the commanding officer or officer-in-charge of any other command, unit, or activity within the Department of Defense. Such assistance may take the form of a complete investigation of the accident or incident, or it may cover only part of the investigation. In a reciprocal situation where the commanding officer or officer-in-charge of any other command, unit, or activity within the Department of Defense requests assistance from any naval command, unit, or activity, the latter should honor the request. If a complete investigation is requested, the report is made in accordance with the regulations of the service actually making the investigation. These investigations are normally conducted without reimbursement for per diem, mileage, or other expenses incurred by the investigating activity.

### Claims Exceeding $20,000

Claims in excess of $20,000 may be compromised, settled and waived only with the prior approval of the Department of Justice.

### Limitations

The authority of the Judge Advocate General or his designee set forth above is not to be exercised in any case in which the claim has been referred to the Department of Justice or a suit has been instituted by a third party against the individual who received or is receiving medical treatment and the suit arises out of the occurrence which gave rise to the third party claim of the United States.

## REPORT OF CARE AND TREATMENT

The below listed information is essential to the proper reporting and final disposition of claims asserted under this Act.

### NAVJAG Form 5890/12

NAVJAG Form 5890/12 (see fig. 13-12) must be used by all Navy medical facilities to report the value of medical treatment furnished to any patient, when a third party may be legally liable for causing the injury or the disease treated or when a Government claim is possible under workmen's compensation, no-fault or medical-payments insurance (e.g., in automobile accident cases).

NAVJAG Form 5890/12 must be computed by using a table such as that in fig. 13-13. The "inpatient" days exclude periods charged to leave (annual or convalescent), periods of weekend liberty, and periods during which the injured party was attached to the hospital at the convenience of the Government (e.g., awaiting orders).

### Treatment of Naval Personnel By Other Federal Agencies

Where medical care is provided to naval or Marine Corps servicemen, retirees or their dependents by another Federal department or agency, the Department of the Navy generally asserts any claim on behalf of the United States. The appropriate forms are forwarded to the action JAG designees.

### Treatment of Non-Naval Personnel

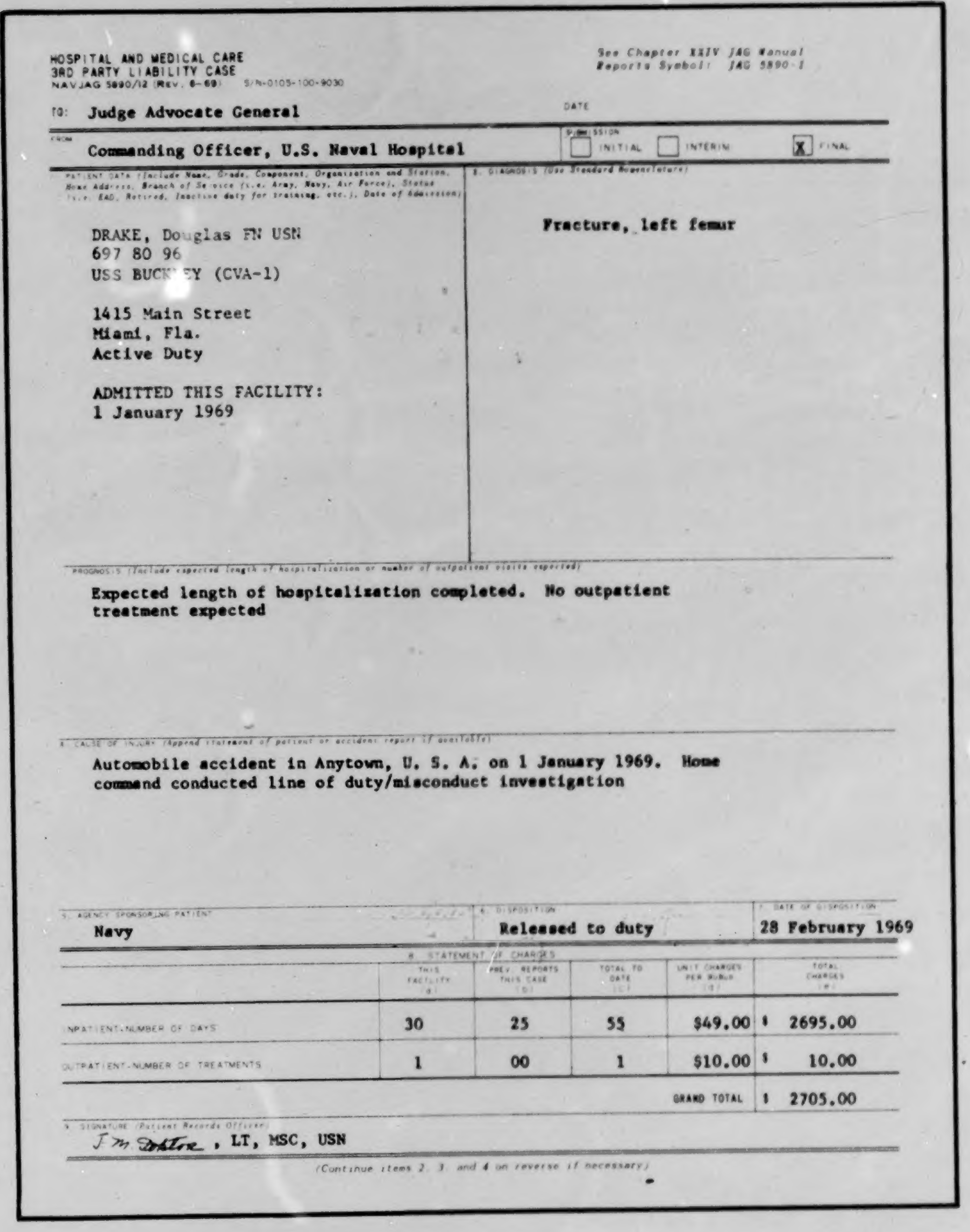
Where care is provided to personnel of another Federal agency or department by a naval medical facility, that agency or department generally asserts any claim in behalf of the United States. In such cases, the NAVJAG Form 5890/12 must be forwarded directly to the appropriate addressee as follows:

- *U.S. Army:* Commanding general of the Army of comparable area commander in which the incident occurred:
- *U.S. Air Force:* Staff judge advocate of the Air Force installation nearest the location where the initial medical care was provided;
- *U.S. Coast Guard:* Department of Health, Education, and Welfare regional attorney's office in the region where the incident occurred;
- *Department of Labor:* Subrogation, Office of the Solicitor, Bureau of Employees Compensation, Department of Labor, Washington, D.C. 20210;
- *Veterans Administration:* Director of the Veterans Administration hospital responsible for medical care of the injured party;
- *Department of Health, Education, and Welfare:* Department of Health, Education, and Welfare regional attorney's office in the region where the incident occurred.

### Initial, Interim And Final Reports

The NAVJAG Form 5890/12 must be submitted to the JAG designee at the following times:

- An "initial" submission of NAVJAG Form 5890/12 must be made as soon as possible after the patient is admitted if it appears that inpatient care will exceed two days, or that more than ten outpatient treatments will be furnished. The "initial" submission need not be based upon an extensive investigation of the cause of the injury or disease, but it should include all known facts. Statements by the patient, police reports, and similar information (if available) should be appended to the form.
- An "interim" submission of NAVJAG Form 5890/12 must be made every four months after the "initial" submission, until the patient is released, transferred, or changed from an inpatient to an outpatient status.
- A "final" submission of NAVJAG Form 5890/12 must be made upon completion of treatment or upon transfer of the patient to another hospital. The hospital to which the patient is transferred should be noted on the form.



HOSPITAL AND MEDICAL CARE
3RD PARTY LIABILITY CASE
NAVJAG 5890/12 (Rev. 6-69) S/N-0105-100-9030

*See Chapter XXIV JAG Manual*
*Reports Symbol: JAG 5890-1*

TO: **Judge Advocate General**

DATE

FROM
**Commanding Officer, U.S. Naval Hospital**

SUBMISSION ☐ INITIAL ☐ INTERIM ☒ FINAL

PATIENT DATA *(Include Name, Grade, Component, Organization and Station, Home Address, Branch of Service (i.e. Army, Navy, Air Force), Status (i.e. EAD, Retired, Inactive duty for training, etc.), Date of Admission)*

DRAKE, Douglas FN USN
697 80 96
USS BUCKLEY (CVA-1)

1415 Main Street
Miami, Fla.
Active Duty

ADMITTED THIS FACILITY:
1 January 1969

3. DIAGNOSIS *(Use Standard Nomenclature)*

**Fracture, left femur**

PROGNOSIS *(Include expected length of hospitalization or number of outpatient visits expected)*

**Expected length of hospitalization completed. No outpatient treatment expected**

4. CAUSE OF INJURY *(Append statement of patient or accident report if available)*

**Automobile accident in Anytown, U. S. A. on 1 January 1969. Home command conducted line of duty/misconduct investigation**

| 5. AGENCY SPONSORING PATIENT | 6. DISPOSITION | 7. DATE OF DISPOSITION |
|---|---|---|
| **Navy** | **Released to duty** | **28 February 1969** |

8. STATEMENT OF CHARGES

| | THIS FACILITY (a) | PREV. REPORTS THIS CASE (b) | TOTAL TO DATE (c) | UNIT CHARGES PER BUBUD (d) | TOTAL CHARGES (e) |
|---|---|---|---|---|---|
| INPATIENT-NUMBER OF DAYS | 30 | 25 | 55 | $49.00 | $ 2695.00 |
| OUTPATIENT-NUMBER OF TREATMENTS | 1 | 00 | 1 | $10.00 | $ 10.00 |
| | | | | GRAND TOTAL | $ 2705.00 |

9. SIGNATURE *(Patient Records Officer)*
J M Stokton, LT, MSC, USN

*(Continue items 2, 3, and 4 on reverse if necessary)*

192.104

Figure 13-12.—NAVJAG Form 5890/12—Hospital and Medical Care 3rd Party Liability Case.

## THE OFFICE OF MANAGEMENT AND BUDGET

### COST OF HOSPITAL AND MEDICAL CARE AND TREATMENT FURNISHED BY THE UNITED STATES

Certain Rates Regarding Recovery From Tortiously Liable Third Persons

By virtue of the authority vested in the President by section 2(a) of the Act of September 25, 1962 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Bureau of the Budget by section 1 of Executive Order No. 11060 of November 7, 1962, (27 F.R. 10925), the following rates are established for use in connection with the recovery, as authorized by such Act, from tortiously liable third persons of the cost of hospital and medical care and treatment furnished by the United States (Part 43 of Chapter I of Title 28 of the Code of Federal Regulations), and have been determined to represent the reasonable value of hospital, nursing home, medical, surgical or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished:

(a) For such care and treatment furnished by the United States in Federal hospitals and nursing homes, with the exception of Freedmen's Hospital, Washington, D.C., and Canal Zone Government hospitals—

| | Hospital Care Per Inpatient Day | | | Outpatient Medical and Dental Treatment | |
|---|---|---|---|---|---|
| Effective Date | Federal General & TB Hospitals | Federal Mental Hospitals | V.A. Nursing Home Units | Per facility visit | Federal Register Source |
| 07/01/62 - 06/30/63 | $36.00 | $14.25 | | $7.00 | 28 F. R. 11516 |
| 07/01/63 - 10/21/63 | 37.00 | 14.75 | | 8.00 | 28 F. R. 11516 |
| 10/22/63 - 06/30/64 | 39.00 | 14.75 | | 8.00 | 28 F. R. 11516 |
| 07/01/64 - 08/31/64 | 40.00 | 15.00 | | 8.00 | 28 F. R. 11516 |
| 09/01/64 - 12/31/65 | 42.00 | 15.50 | | 8.50 | 28 F. R. 12482 |
| 01/01/66- 06/30/66 | 44.00 | 16.00 | $16.50 | 9.00 | 30 F. R. 16220 |
| 07/01/66- 09/30/66 | 45.00 | 16.50 | 16.50 | 9.00 | 30 F. R. 16220 |
| 10/01/66 - 06/30/68 | 45.00 | 17.00 | 17.50 | 9.00 | 31 F. R. 10754 |

192.105.1

Figure 13-13.–The Office of Management and Budget Rate Schedules.

| | Hospital Care Per Inpatient Day | | | Outpatient Medical and Dental Treatment | |
|---|---|---|---|---|---|
| Effective Date | Federal General & TB Hospitals | Federal Mental Hospitals | V.A. Nursing Home Units | Per Facility Visit | Federal Register Source |
| 7/1/68 - 8/31/69 | $49.00 | $19.00 | $16.00 | $10.00 | 33 F.R. 6943 & 33 F.R. 7048 |
| 9/1/69 - 6/30/70 | 53.00 | 24.00 | 18.00 | 11.00 | 34 F.R. 14252 |
| 7/1/70 - 6/30/71 | 58.00 | 25.00 | 19.00 | 12.00 | 35 F.R. 10531 |
| 7/1/71 - 6/30/73 | 61.00 | 27.00 | 20.00 | 13.00 | 36 F.R. 11327 |
| | DOD General Hospitals | | | DOD Outpatient Treatment Per Visit | |
| * 7/1/73 and Thereafter | 126.00 | 47.00 | 31.00 | 16.00 | 38 F.R. 22444 |

(b) For such care and treatment furnished at Government expense in a facility not operated by the United States, the rates shall be the amounts expended by the United States for such care and treatment;

(c) For such care and treatment at Freedment's Hospital, Washington, D.C., the rates shall be those charged full-pay private patients by the hospital at the time the care and treatment is furnished by the United States; and

(d) For such care and treatment at Canal Zone Government hospitals, the rates shall be those established, and in effect at the time the care and treatment is furnished, by the Canal Zone Government for such care and treatment furnished to beneficiaries of other U.S. Government agencies.

192.105.2

Figure 13-13.—The Office of Management and Budget Rate Schedules.

### Civilian Medical Care

The district medical officers and district dental officers are responsible for paying the emergency civilian medical expenses incurred by active-duty servicemen. The officers making disbursement should notify the JAG designee when a third-party may be liable for causing the injury or disease treated or when a Government claim is possible under Workmen's Compensation or under medical patient's insurance.

### Information For Health Record And For Action JAG Designees

Copies of NAVJAG Form 5890/12 must be retained in the health record of the patient. Action JAG Designees must be immediately notified if a patient receives treatment subsequent to the issuance of a final NAVJAG Form 5890/12, if the treatment is related to the initial injury incurred or the disease contracted.

### CHAMPUS Cases

CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) contractors for hospital treatment have been directed by the Executive Director, OCHAMPUS, Denver, Colorado 80240, to forward reports of payments in injury cases to the JAG designees. Reports of payments for physician and outpatient care may be obtained by JAG designees from the appropriate fiscal administrators.

## INVESTIGATIONS

Any investigation conducted as a result of a medical care claim must be conducted in accordance with the general investigative procedures as discussed under the heading "Investigation," which appears above.

### When Required

Whenever medical care is furnished by the Department of the Navy, either in kind without reimbursement or by reimbursing another department, agency or private facility, or any individual under circumstances that may give rise to a medical care claim, an investigation is required. However, no investigation is required if the medical care furnished does not exceed three "inpatient" (admittance to hospital overnight) days or 10 "outpatient" (treatment without admittance to a medical facility) days. In cases where the Department of the Navy is reimbursed by another agency for medical care furnished at a naval facility, that department is responsible for conducting an investigation of the incident occasioning the claim and processing any claim submitted.

### Consolidation

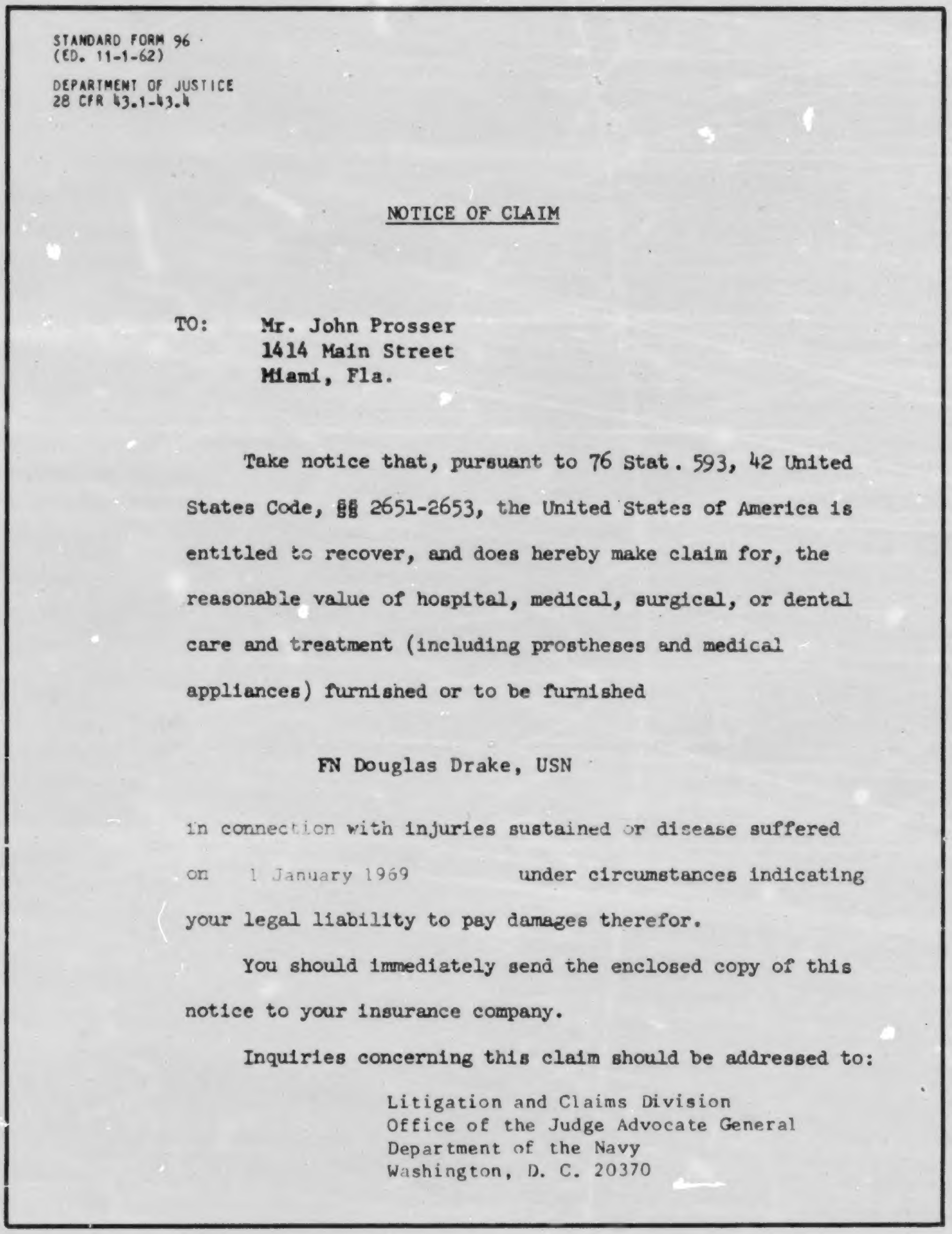
Investigative duplication must be avoided for purposes of the Federal Medical Care Recovery Act. It is the responsiblity of the action JAG designee upon receipt of NAVJAG Form 5890/12 or equivalent CHAMPUS forms to utilize an earlier investigation if one has been conducted or to determine that an investigation should be commenced. It is also the responsibility of the action JAG designee to avoid duplication of effort in the investigation of medical care claims.

## DETERMINATION, ASSERTION, AND COLLECTION OF CLAIMS

Determination as to liability under the Federal Medical Care Recovery Act is to be made by the action JAG designee. He is also tasked with the responsibility for asserting medical care claims and making efforts for settlement and final collection.

### Determination And Notice Of Claim (STD Form 96)

Action JAG designees, regardless of the amount of the claim, must determine the liability in accordance with the law of the state or country where the incident occurs. If he determines that a third party is liable he should forward a Notice of Claim (Standard Form 96) (see fig. 13-14) to the third party. If he determines that an insurance company or workman's compensation carrier is liable, he should forward notice of the Government's claim to the



STANDARD FORM 96
(ED. 11-1-62)

DEPARTMENT OF JUSTICE
28 CFR 43.1-43.4

NOTICE OF CLAIM

TO: Mr. John Prosser
1414 Main Street
Miami, Fla.

Take notice that, pursuant to 76 Stat. 593, 42 United States Code, §§ 2651-2653, the United States of America is entitled to recover, and does hereby make claim for, the reasonable value of hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished

FN Douglas Drake, USN

in connection with injuries sustained or disease suffered on 1 January 1969 under circumstances indicating your legal liability to pay damages therefor.

You should immediately send the enclosed copy of this notice to your insurance company.

Inquiries concerning this claim should be addressed to:

Litigation and Claims Division
Office of the Judge Advocate General
Department of the Navy
Washington, D. C. 20370

192.106

Figure 13-14.—Standard Form 96.—Determination and Notice of Claim.

appropriate party. If he determines that there is no liability, this should be noted by endorsement to the Judge Advocate General. The action JAG designee should set out his reasons for concluding that liability exists, if he so finds. Whenever the issue of liability cannot be resolved by him, the matter should be forwarded to the Judge Advocate General.

### Foreign Claims

Claims against foreign governments or a political subdivision, agency or instrumentality thereof or against a member of the armed forces or an official or civilian employee of such foreign government, must not be asserted without the prior approval of the Judge Advocate General. Investigation and report thereof is made as provided under the Federal Medical Care Recovery Act, unless the provisions of other agreements (e.g., Status of Forces Agreements, treaties or other statutes) or regulations in implementation thereof, negate the requirement of such investigation.

### Advice to Injured Party

In cases where an action JAG designee determines that a third party is liable to the Government for injuries to the injured party and Notice of Claim (Standard Form 96) has been issued, the injured party must be contacted and advised in writing that:

- In accordance with the Federal Medical Care Recovery Act, the United States is entitled to recover from the third party the cost of medical services furnished to the injured party;
- The injured party may be required to (a) supply pertinent information to the Government; (b) notify the Government of any settlement reached with the third party; (c) cooperate in any prosecution against the third party initiated by the United States;
- The injured party may seek counsel concerning any claim for personal injury and that he must furnish the name of such counsel to the Government;
- The injured party must not sign a settlement or furnish the third party information concerning the medical care claim, without the prior consent of the Judge Advocate General.

### Pursuit Of Claims

The action JAG designee, where possible and where such course of action is in the best interests of the Government, should pursue settlement of a medical care claim against a third party. In those cases where settlement is not possible or contrary to the best interests of the United States, the action JAG designee must determine whether the file should be closed and filed or forwarded to the Judge Advocate General. However, the authority to close and file cases is limited to those cases over which compromise authority is granted, e.g., where the action JAG designee may: (a) accept payment for the full amount of the claim and execute a release therefor, or (b) waive completely or compromise and execute a release of any claim not in excess of $5000.

### Claims File

In cases exceeding their settlement authority or in other cases deemed appropriate, the action JAG designees must take the action as discussed above under the headings "Determination and Notice of Claim" and "Foreign Claims" and then must forward the file to the Judge Advocate General for action. The claims file must include the information as detailed by the Manual of the Judge Advocate General, Chapter XXIV, Section 2405(e).

### Waiver And Compromise Requests

In cases in which a compromise or a complete waiver of the Government's claim is requested and the claims exceed the settlement authority of the action JAG designee, the claims file must be forwarded to the Judge Advocate General. The file must include all the information required by the *Manual of the Judge Advocate General* Chapter XXIV, Section 2405(e) and (f).

### Payments

Payments of claims should be made in the form of checks, drafts, or money orders payable to the collecting organization (e.g., "Commander Naval Forces Marianas") and are to be forwarded for deposit by the disbursing officer serving the collecting organization.

## MEDICAL RECORDS

The Surgeon General has been designated by the Secretary of the Navy as the official responsible for the execution of Department of Defense policies in releasing medical records of members and former members of the Navy. Commanding officers of United States naval hospitals and dispensaries have been authorized to release medical records physically located within their commands directly to the injured member or his representative subject to certain limitations as set forth in Chapter 23 of the *Manual of the Medical Department*. Where certifications are necessary preparatory to litigation, the Judge Advocate General, the Deputy Judge Advocate General or any Assistant Judge Advocate General may execute certificates of full faith and credit certifying the signatures of any officer of the Navy Department.

## STATISTICAL REPORTS

Action JAG designees must forward monthly reports to the Judge Advocate General setting forth the following information:

- The number of claims asserted during the month;
- The number of recoveries made during the month (In cases where partial recoveries are made, the claim will not be considered to be "recovered" until the total recovery is effected);
- The dollar amount of claims asserted during the month;
- The dollar amount of recoveries made during the month (including partial recoveries); and
- The total number of active claims on file at the end of the month.

## CLAIMS UNDER RECOVERY ACT INVOLVING OTHER CLAIMS

In the interests of the efficient disposition of claims, an effort should be made to include all medical care and property damage claims in a single demand for payment against a third party or his insurance company.

## ADMIRALTY CLAIMS

Admiralty claims are fundamentally claims against the United States for damage caused by a vessel in the naval service and affirmative claims by the United States for damage caused by a vessel or floating object to Navy property. Most collisions involve claims by and against the Navy.

### Definitions

Typical admiralty claims include in addition to collisions and cases of actual physical contact with another vessel or shore structure, the following:

- Wave wash or swell damage;
- Damage to fish nets or traps, lobster pots, oyster beds or clam flats;
- Damage to commercial cargo carried in Navy bottom;
- Personal injury or death of civilian not employed by the Government;
- Damage resulting from oil spills, spray painting or blowing tubes;
- Damage to third parties resulting from fire or explosion of a naval vessel.

## INCIDENT REPORTS

A prime requirement in the handling of an admiralty claim is to make an immediate preliminary report by the most expeditious means (telephone or message) to the Judge Advocate General (Admiralty Division) and to the cognizant judge advocate in the field. If a casualty report or report of significant damage is necessary under other directives (e.g., *U.S. Navy Regulations*) the requirement for an immediate report of the incident can be satisfied by including the Judge Advocate General and the cognizant local judge advocate in the field as addressees of the casualty report.

The purpose of the immediate preliminary incident report of an incident which could potentially occasion an admiralty claim is to enable the local judge advocate or the Admiralty Division of the Office of the Judge Advocate General to render prompt assistance with respect to surveying the damage, dealing with opposing interests and advising as to the scope of any investigation which may be required.

## CHAPTER 14

# LEGAL ASSISTANCE

An area of law in which you, as a Legalman, will be heavily involved in caring for the personal needs of your fellow Navy members is legal assistance. Its subject matter is so diverse that it encompasses nearly every type of law practiced in the United States. Legal assistance cases, for example, run the gamut from domestic relations and taxation to veterans' rights.

Although your normal role in the legal assistance area is that of assistant to the legal assistance officer, you, as a Legalman, will often be responsible for solving the more routine problems. You must, therefore, be able to separate complex legal problems from simple legal matters and further, be able to distinguish those difficulties which merely concern administrative affairs. A complete discussion of your duties is set forth later in this chapter.

## LEGAL ASSISTANCE PROGRAM

A legal assistance program providing needed legal advice and assistance to military personnel and their dependents has been in operation in the Naval service since 1943. Legal assistance is the giving of advice and assistance regarding personal legal problems of a civil nature, as distinguished from criminal or official service matters.

### PURPOSE

Personal problems that remain unresolved adversely affect morale and efficiency and frequently result in behavior that requires disciplinary action. It is the purpose of the legal assistance program to provide prompt assistance to resolve personal legal difficulties. The program thus serves as an effective preventive law measure which contributes to the morale and efficiency of the command.

### POLICY

It is the policy of the Department of the Navy to maintain, from available resources, a legal assistance program to make eligible persons aware of their legal rights and obligations. The program is designed to assist military personnel and their dependents in obtaining adequate legal advice and services from within the military service.

### LEGAL ASSISTANCE OFFICERS

All Navy and Marine Corps judge advocates on active duty, regular or reserve, and all civilian lawyers under the cognizance of the Judge Advocate General who are members of the bar of a Federal court or of the highest court of any state or, in foreign countries, who are authorized to practice law in the courts of the country concerned, are legal assistance officers. Navy and Marine Corps judge advocates not on active duty may be designated as legal assistance officers by the Judge Advocate General. While performing legal assistance duties, legal assistance officers are guided by the Canons, Ethical Considerations, and Disciplinary Rules of the Code of Professional Responsibility of the American Bar Association and the Canons of Professional Ethics of the Federal Bar Association. Persons who are authorized to practice law in the courts of a foreign country are guided by similar standards which have been promulgated for the guidance of lawyers in the country concerned.

## PERSONS ELIGIBLE FOR ASSISTANCE

Legal assistance is to be available to all members of the Armed Forces of the United States and their dependents, and military personnel of allied nations who serve in the United States, its territories or possessions. The principal intended recipients of such service are active duty military personnel. It is also extended to retired military personnel, their dependents, survivors of members of the Armed Forces who would be eligible were the service members alive, and, in overseas areas, to civilians, other than local-hire employees, who are in the employ of, serving with, or accompanying the United States Armed Forces and their dependents. Such service is permitted only if the workload of the office renders such service feasible.

Persons separated from active service other than by retirement are not generally eligible for legal assistance. Normally, the various veterans organizations will assist such individuals.

## CONFIDENTIAL AND PRIVILEGED CHARACTER OF SERVICE PROVIDED

All information and files pertaining to military personnel and their dependents and any other party receiving legal assistance must be treated as confidential and privileged in a legal sense (see Canon 4, Code of Professional Responsibility, A Lawyer Should Preserve the Confidences and Secrets of His Client—*Black's Law Dictionary, Revised Fourth Edition*). You are cautioned that privilege and confidentiality in a legal sense, as compared with confidentiality in a military sense, is a much stricter concept. Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him. You, as the assistant to the legal assistance officer, automatically become burdened with this fiduciary responsibility (position of trust and confidence). Consequently, it is one of your duties as a Legalman to see that all legal business conducted with or on the behalf of the client is discussed by you only with the legal assistance officer handling the client's case. The client alone possesses the prerogative of waiving his right to have his personal affairs kept privileged; therefore, disclosure of any such information cannot be made without his express permission. Disclosure may not, in any case, be ordered by military authority.

The nature of the privilege does not prohibit the disclosure of nonprivileged statistical data that is required to satisfy the legal assistance program reporting requirements dictated by the Judge Advocate General.

## FUNCTIONS OF LEGAL ASSISTANCE OFFICERS

A legal assistance officer, in addition to his responsibility to discharge his assigned duties which are beyond the scope of a legal assistance role, is required to perform a myriad of legal functions to satisfy the legal assistance needs of his fellow Navy citizens. The breadth and variety of these functions are discussed below.

The legal assistance officer and the Legalman in today's modern Navy have an increasingly important and significant role to play in helping to maintain the high morale and personal motivation needed in an all-volunteer force. As the concept of group legal services gains greater favor throughout our society, the Navy's legal assistance program has provided, and is continuing to provide, a comprehensive and high quality level of legal services to Navy and Marine Corps personnel. This is being accomplished through an expansion in scope of the traditional program and, further, the development of an Expanded Legal Assistance Program.

With the expansion of the traditional program and the development of the Expanded Legal Assistance Program, there is an increased need for effective liaison with other government agencies as well as with other naval activities. As the legal assistance officer and the Legalman come into contact with the civilian legal practice, relationships with the local bar associations, courts, and the business community must be established on a sound footing. The net result of such an effective working relationship will provide better legal assistance for clients.

## ATTORNEY-CLIENT RELATIONS

The very nature of legal assistance requires a good rapport between the JAG officer, the Legalman, and the client. Striving for greater respect and understanding is a necessary ingredient of a successful legal assistance program.

In order for naval personnel to have faith and confidence in their lawyer and the Legalman, they must first know them and understand their services. It is at the level of day-to-day contacts with clients that the greatest opportunities for fostering good rapport exist. What follows are suggestions for developing such relations in these day-to-day contacts.

### First Impressions

Very often a client's first impression of a Navy lawyer is obtained through a telephone call or a visit to the legal assistance office. As a Legalman, you should try to see your office as others might see it. Is it business-like, clean, comfortable, and efficient looking? Are newcomers made to feel comfortable? Do you and the other personnel working in the outer office appear to be competent and friendly? Are the offices sound-proof enough in the form of carpets, curtains, and other materials so that clients' problems can be discussed quietly, discreetly, and in private? The clients' waiting room as well as the lawyer's private office should present a professional appearance.

The Legalman's telephone manners are very important. A "voice with a smile" can encourage a prospect to follow up his phone call with a visit. A gruff or impatient telephone reception can discourage a prospective client from ever seeing the legal assistance officer. By providing the receptionist with a checklist, his or her contribution to the operation of the legal assistance office can be materially increased and the job made more interesting as well. See figure 14-1 for a sample checklist. At the time the client first calls or comes into the office and speaks to the receptionist or Legalman, inquiry should be made as to the general nature of the assistance being sought; e.g., taxes, wills, automobile registration, accident, and so forth. Once that has been determined, the Legalman, by consulting his checklist, can advise the client what documents or information the client should bring along at the time he consults with the legal assistance officer. By following this procedure, one or more trips to the office and much waiting time in the office can often be saved for the client as well as for the legal assistance officer.

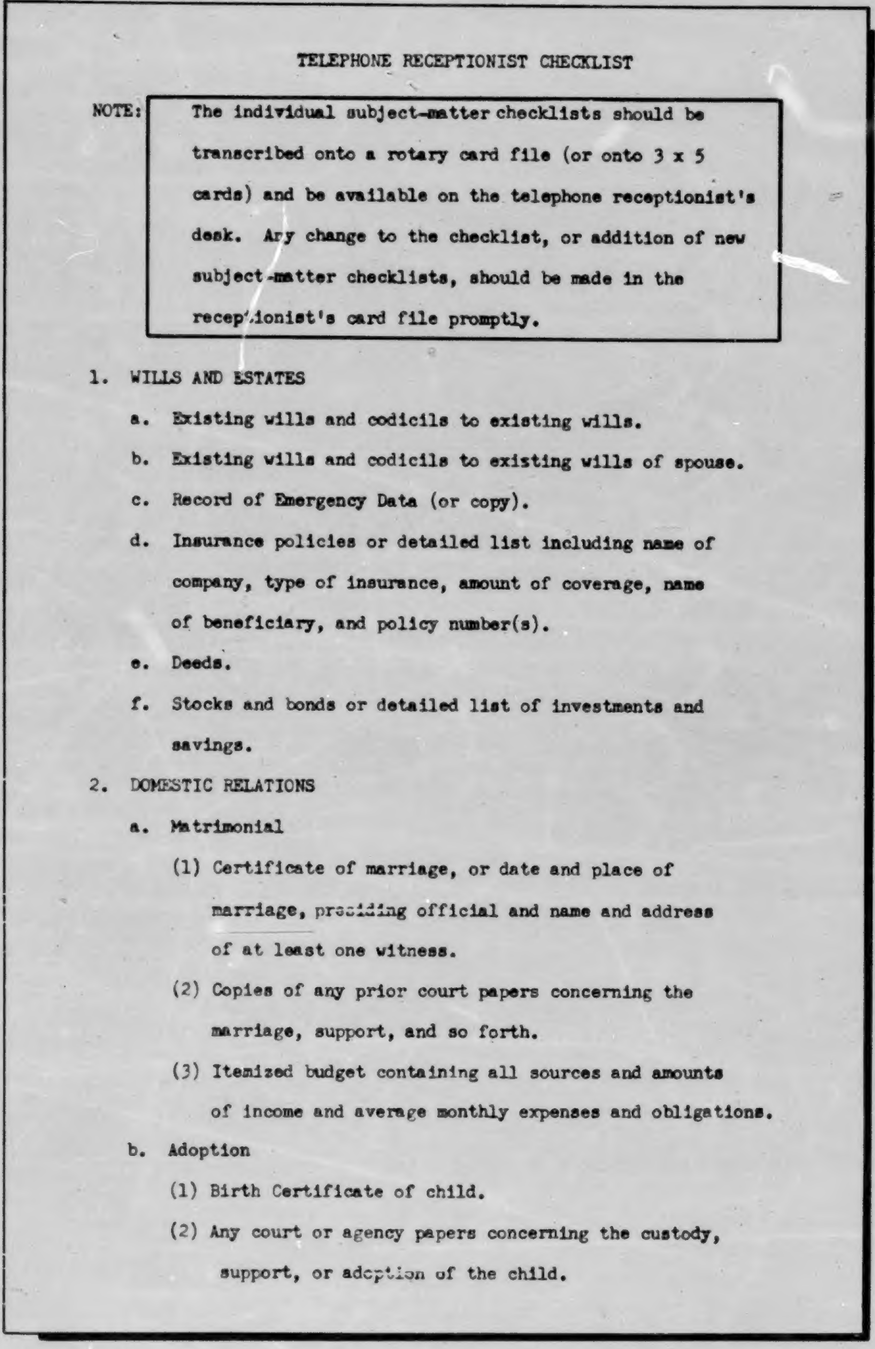
When you (or the legal assistance officer) are busy, the client will appreciate recognition that his time is valuable, also. An advance telephone call to set a new appointment or a few moments spent in explaining the delay to the client are merely applications of the "Golden Rule" in attorney-client relationships.

### Keeping the Client Informed

To the client his case may represent one of the most important things in his life. To him it may be a source of anxiety. Naturally he expects, and is entitled to receive, a continuing report on the progress of his case. This may be done with little or no extra effort on either your or the legal assistance officer's part by sending copies of correspondence to the client, or by an occasional telephone call to report the status of the case. A periodic letter, even though it has little to report, will be appreciated. This shows that the legal assistance officer has not allowed the matter to be "buried" or forgotten. This could be done by the legal assistance office staff on a monthly diary basis to save the lawyer's time. Each month a brief status report from individual case records could be prepared, reviewed by the legal assistance officer, and sent to the client concerned to bring him up-do-date on the status of his case.

## SCOPE OF LEGAL ASSISTANCE SERVICES AND FACILITIES

Advice may be given on all legal matters and quasilegal matters except where the matter involves a conflict with the Department of Defense or where there is a claim or position which is opposed to the best interests of the



TELEPHONE RECEPTIONIST CHECKLIST

NOTE: The individual subject-matter checklists should be transcribed onto a rotary card file (or onto 3 x 5 cards) and be available on the telephone receptionist's desk. Any change to the checklist, or addition of new subject-matter checklists, should be made in the receptionist's card file promptly.

1. WILLS AND ESTATES
   a. Existing wills and codicils to existing wills.
   b. Existing wills and codicils to existing wills of spouse.
   c. Record of Emergency Data (or copy).
   d. Insurance policies or detailed list including name of company, type of insurance, amount of coverage, name of beneficiary, and policy number(s).
   e. Deeds.
   f. Stocks and bonds or detailed list of investments and savings.
2. DOMESTIC RELATIONS
   a. Matrimonial
      (1) Certificate of marriage, or date and place of marriage, presiding official and name and address of at least one witness.
      (2) Copies of any prior court papers concerning the marriage, support, and so forth.
      (3) Itemized budget containing all sources and amounts of income and average monthly expenses and obligations.
   b. Adoption
      (1) Birth Certificate of child.
      (2) Any court or agency papers concerning the custody, support, or adoption of the child.

192.107.1

Figure 14-1.—Telephone Receptionist Checklist.

3. AUTOMOBILES (depending on type of problem)
   - a. Documents relating to purchase.
   - b. Documents relating to financing of vehicle.
   - c. Warranties, guaranties, repair documents, and so forth.
   - d. Insurance policies.
   - e. Policy reports (accident cases).
   - f. Data on other vehicles and drivers involved (accident cases).
   - g. Any correspondence or court documents regarding the accident.

4. TAXES
   - a. Copy of returns filed for previous three years.
   - b. All tax withholding slips and information returns.
   - c. Copy of PCS/TAD orders (if applicable).
   - d. Check stubs or receipts for moving, medical, casualty or other deductible items.
   - e. Rough filled-out return.

5. FINANCES, CONTRACT AND CONSUMER LAW
   - a. Itemized budget containing all sources and amounts of income and average monthly expenses and obligations.
   - b. Any correspondence or court documents regarding financial obligations.

6. LANDLORD-TENANT AND REAL ESTATE
   - a. Lease.
   - b. Security deposit receipt.
   - c. Pictures of any disputed property, if possible.
   - d. Any correspondence or court documents relating to the transaction.

7. POWERS OF ATTORNEY
   - a. Record of Emergency Data (or copy).
   - b. Copy of orders.

192.107.2

Figure 14-1.–Telephone Receptionist Checklist–(Continued).

U.S. Government. The general category of office advice and counsel for purposes of the traditional program includes the drafting of wills, powers of attorney, and contracts.

In addition such functions as assisting personnel with the filing of routine claims with the Veterans Administration, the Social Security Administration, the Internal Revenue Service, or the Immigration and Naturalization Service, to name a few, are NOT considered activities "opposed to the best interests of the U.S. Government."

### Assistance Beyond Advice And Counsel

In order to provide professional-quality services to naval personnel and their dependents beyond office advice and counsel, legal assistance duties may entail some or all of the following actions on behalf of the client:

LETTERS ON THE CLIENT'S BEHALF.–There are many instances when a letter from an attorney outlining the client's problem is much more effective than a letter on the same subject from the client himself. Such a letter will often bring about a speedy and satisfactory resolution of the client's problem, whether it involves a landlord-tenant situation, a dispute with a collection agency, a civil rights matter, or other relatively uncomplicated problem. In such situations the legal assistance officer, whether or not admitted to practice law in the local jurisdiction, is authorized to write a letter on the client's behalf to the appropriate party as his representative either as an affirmative move or as a defensive measure.

NEGOTIATIONS FOR A CLIENT.–There may be a need for a lawyer to handle the negotiation of a minor legal matter for a serviceman because his adversary has retained a lawyer or because the adversary is an insurance company, corporation, or partnership with agents or employees who are skilled in negotiation. Without starting a lawsuit or an administrative proceeding, the legal assistance officer can represent the serviceman by communicating, orally or in writing, with the adversary or his lawyer or agent. A case involving minor property damage incurred by the client would lend itself to this type of negotiation. Such a case should be one that is not economical for a member of the civilian bar to handle. Personal injury cases, as a general rule, should not be taken by the legal assistance officer.

Ideally, any matter involving negotiation by the legal assistance officer should involve a minimum of time and effort. Such cases should not be allowed to predominate over the daily routine items of business handled by the legal assistance office and which would deprive other clients of needed services. The legal assistance officer should not take on the matter if there is any doubt in his mind that the case involves issues that are too complicated to handle quickly, or requires investigation that would be too time consuming, or may result in damages which would make the case inviting for a civilian attorney to handle. If, after the initial negotiation process, it becomes obvious to the legal assistance officer that the above considerations have developed, he should withdraw, and, if appropriate, recommend to the client that the matter be referred to a civilian lawyer.

PREPARING PLEADINGS.–The legal assistance officer may gather all necessary data from the serviceman or his dependent, have the information typed on the appropriate legal forms acceptable in the proper court of record, give the forms to the serviceman or his dependent and direct him or her to the proper clerk's office where he or she may file the papers *in propria persona* (by oneself). The legal assistance officer may have direct contact with the pertinent member of the court or clerk's staff whenever unusual questions arise concerning the serviceman's pleadings, but he cannot be the attorney of record in the matter, unless the case falls under the Expanded Legal Assistance Program (discussed below). The rendering of such services to military personnel and their dependents is permissible under the legal assistance program as these services are an integral and essential part of the total mission of the military services.

The utilization of Navy and Marine Corps judge advocates to assist military personnel in the preparation of *in propria persona* pleadings is entirely consistent with the Judge Advocate

General's Federal functions. Adoptions, name changes, and other matters affecting family life involve activities which clearly fall within the framework of one of the Federal functions over which the Judge Advocate General is invested with authority and control. Legal assistance services in these matters materially lessen the potential for the prolongation of domestic difficulties, eliminate excessive amounts of marital friction and anxiety on the part of the family, and serve as a catalyst to restore the serviceman's morale and military efficiency once a satisfactory legal solution has finally been achieved.

A member having a problem incident to his official capacity in the military should be referred for further assistance to a specifically named individual in the proper staff section which has responsibility for the action. This may be another judge advocate who can handle the matter in his official command capacity. It could even be the legal assistance officer after he has obtained permission from the senior judge advocate or commanding officer to assist the man in a different capacity. Or it may be another department such as disbursing or personnel. Legal assistance personnel may discuss the servicemen's problem directly with the responsible staff officer concerned in order to ensure that the serviceman's position is clearly communicated and understood. The legal assistance officer, however, should not become an advocate in the case.

Pursuant to 10 U.S.C. 1552, a judge advocate may appear as counsel in a case before the Board for Correction of Naval Records (BCNR proceedings are "personnel administration proceedings" within the meaning of the special exception contained in paragraph 3 of 18 U.S.C. 205) whether or not he is so assigned or detailed, so long as his activity as counsel is not inconsistent with the faithful performance of his official duties, and so long as he does not receive compensation for such activity.

### Expanded Legal Assistance Program

The *JAG Manual*, Chapter XIX and Appendix 19a, set forth the details regarding the Pilot Legal Assistance Program (now known as the "Expanded" Program,) including but not limited to, such matters as qualifications of legal assistance officers, appearance in court, representation of opposing parties in interest, the purpose of the program and limitations on its use.

The Pilot Legal Assistance Program was initiated in 1970. It provides the opportunity for representation of military personnel and their dependents in the local civil and criminal courts by military attorneys of record under certain limited conditions. In general, persons who meet the below eligibility criteria may be provided such assistance:

- Single military personnel in pay grades E-3 and below who have no independent source of substantial income.
- Married military personnel in pay grades E-4 and below, and their dependents, if they have no independent source of substantial income.
- Military personnel not falling into the two categories above but who cannot afford the services of a lawyer without substantial financial hardship.

Assistance under the Pilot Program is NOT available to retired military personnel or their dependents.

Although not precluded by the guidelines, ordinarily it would be inappropriate for a legal assistance officer to become involved in a prolonged tort action or major criminal case. Referral to a Public Defender's Office or lawyer referral service, as appropriate, is the recommended course of action.

## WILLS AND ESTATES

Generally, most servicemen and their dependents will need only simple wills. The legal assistance staff should be able to find time to write at least a simple will for everybody who needs one. However, even a simple will for an uncomplicated estate, which may do little more than confirm the plan that a State has already established, is an estate plan. It takes a thorough inquiry to make certain that important factors have not been overlooked which might affect a person's estate. An estate planning analysis of some clients' personal and financial affairs may reveal the need for drafting more complicated wills, and in some cases, separate trust agreements. The legal assistance officer must use his own judgment in determining how far he can go in drafting the documents for more complicated estate plans. He must take into consideration such factors as his own legal expertise in estate planning and in estate and gift taxation; the amount of time he has available to draft such estate plans; whether or not the client is a career military person; whether or not the client is retired from the military; the fianncial status of the client; the urgency of the situation (i.e., must the serviceman report to a combat zone within the next month); and the needs of his other clients. The legal assistance officer must be sure that the beneficiaries for the death gratuity and unpaid pay and allowances contained on the Record of Emergency Data are consistent with the testator's desires. The client should, if practicable, bring in his important papers—deeds, existing wills, insurance policies, stock certificates, and his Record of Emergency Data (or a copy), so the legal assistance officer can look them over. The client should be warned not to change designations on his Record of Emergency Data in the future without checking with a lawyer to see what effect it will have on his estate.

If the legal assistance staff has the necessary expertise and time, the handling of more complicated estate plans for the career active serviceman who may or may not have independent income, or who has a complicated family situation, should be considered. In those cases which cannot be handled, after giving full consideration to all the above factors, the client should be referred to the civilian bar.

Figures 14-2 through 14-4 contain checklists for simple and more complex wills. You may want to adapt these forms for use at your command.

### Why Have A Will?

The answer to the question "Why Have A Will" may be found in the information contained in figure 14-5. The information presented is suitable for reproduction at the local command level for use in the legal assistance program as a handout or information sheet concerning wills. You may wish to adapt it for local use.

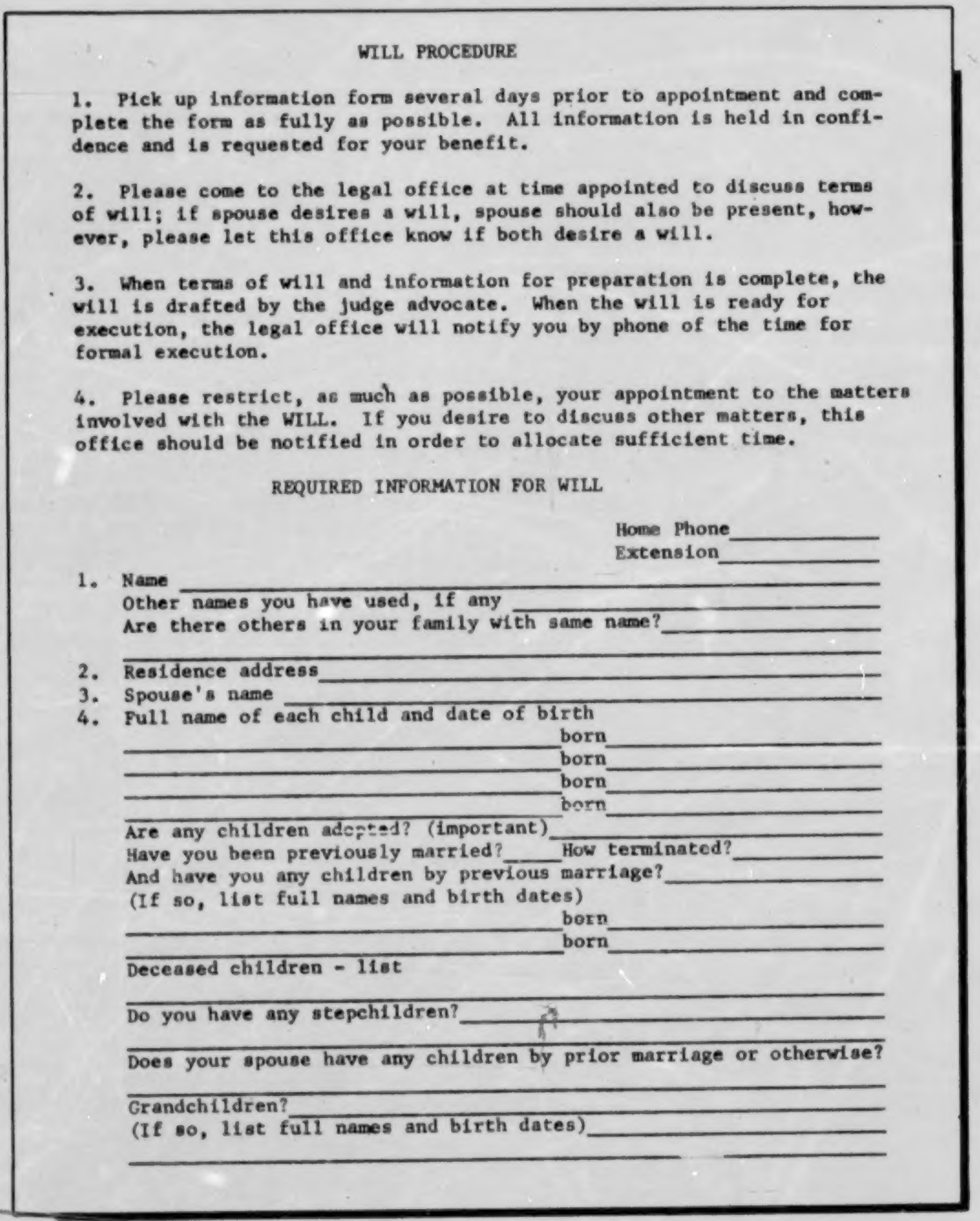
## DOMESTIC RELATIONS

Under the traditional legal assistance program, legal assistance is authorized clients, on an *in propria persona* (by oneself) basis, in preparing pleadings for adoption of children, for a change of name, for an annulment, and for other matters affecting family life.

However, under the Expanded Legal Assistance Program, the legal assistance officer may represent a client in court as the attorney of record in domestic relations matters if he is admitted to practice in the local jurisdiction, or if, through special arrangements made under the Expanded Program, he is allowed to represent the client in court for those limited purposes even though not admitted to the local bar. Under the Expanded Program, the legal assistance officer may take contested divorce cases if his workload permits and if the divorce proceeding does not appear to be unduly complicated, or does not promise to be a long, drawnout battle between the spouses.

As a matter of policy, under either program the legal assistance officer should take as his client, as between a serviceman and his wife or between two servicemen having adverse interests in the same manner, the first one to contact the legal assistance officer. The other person, if he or she contacts the legal assistance officer, should be referred to a legal assistance officer in another Navy legal assistance office (if one is close enough); to a legal assistance office of another military service in the area; or, failing that, to a Naval Reservist.

Under the Expanded Program the legal assistance officer should not hesitate to represent the wife of a sailor at sea in a family matter. However, in order to lessen the impact of taking the wife's case, legal assistance should be offered to the sailor at sea contemporaneously with the assistance given to the wife, or as soon as possible thereafter, without breaking the privileged characteristic of the attorney-client relationship of the wife and her attorney. If divorce proceedings are contemplated, it is permissible to send a general letter to the client and to his or her spouse (figure 14-6). From a practical point



WILL PROCEDURE

1. Pick up information form several days prior to appointment and complete the form as fully as possible. All information is held in confidence and is requested for your benefit.

2. Please come to the legal office at time appointed to discuss terms of will; if spouse desires a will, spouse should also be present, however, please let this office know if both desire a will.

3. When terms of will and information for preparation is complete, the will is drafted by the judge advocate. When the will is ready for execution, the legal office will notify you by phone of the time for formal execution.

4. Please restrict, as much as possible, your appointment to the matters involved with the WILL. If you desire to discuss other matters, this office should be notified in order to allocate sufficient time.

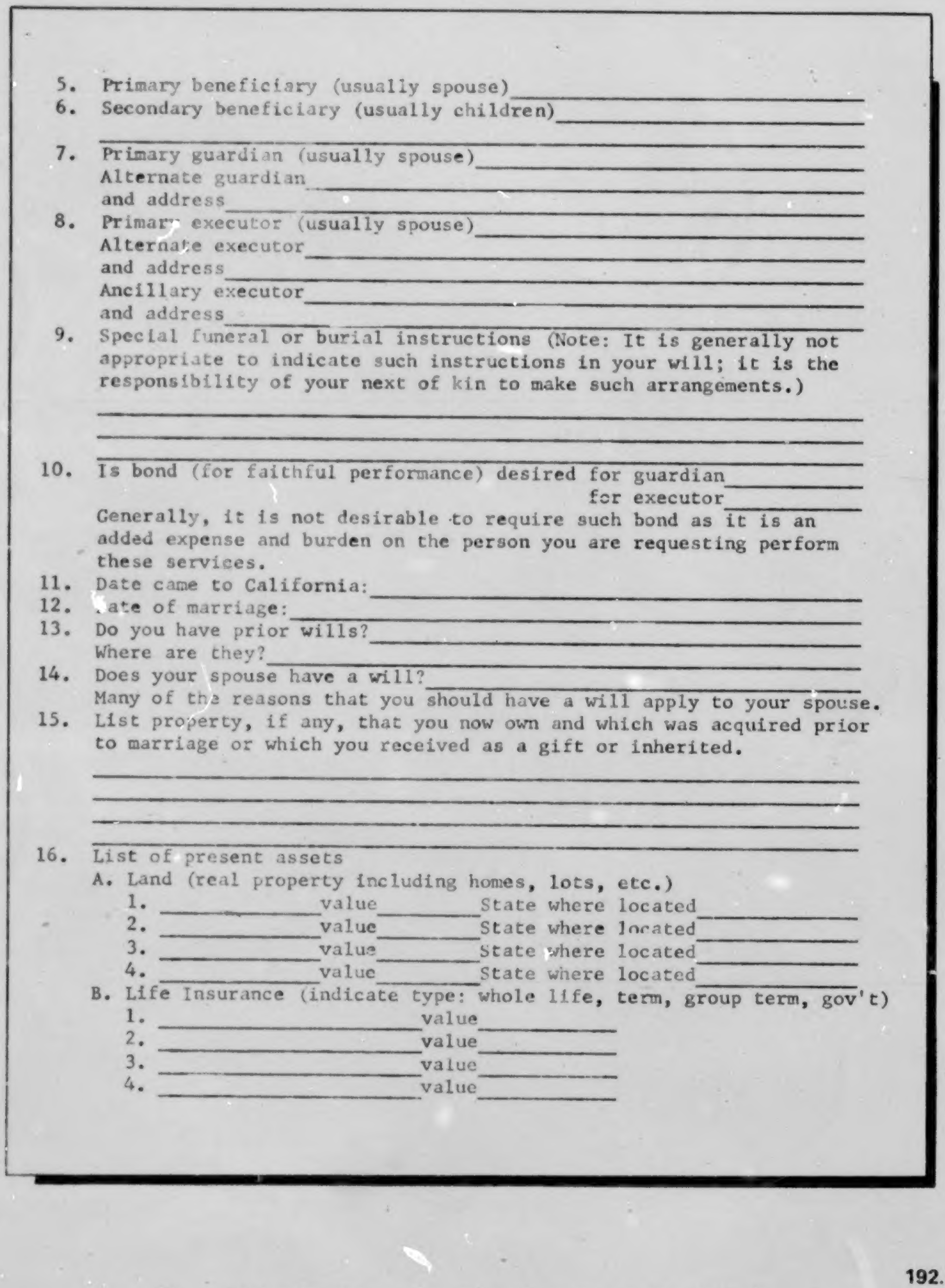
REQUIRED INFORMATION FOR WILL

Home Phone____________
Extension____________

1. Name ______________________________
Other names you have used, if any ______________
Are there others in your family with same name?______________
______________________________
2. Residence address______________________________
3. Spouse's name ______________________________
4. Full name of each child and date of birth
______________________ born______________
______________________ born______________
______________________ born______________
______________________ born______________
Are any children adopted? (important)______________
Have you been previously married?_____ How terminated?__________
And have you any children by previous marriage?______________
(If so, list full names and birth dates)
______________________ born______________
______________________ born______________
Deceased children - list
______________________________
Do you have any stepchildren?______________________
______________________________
Does your spouse have any children by prior marriage or otherwise?
______________________________
Grandchildren?______________________________
(If so, list full names and birth dates)______________
______________________________

192.108.1

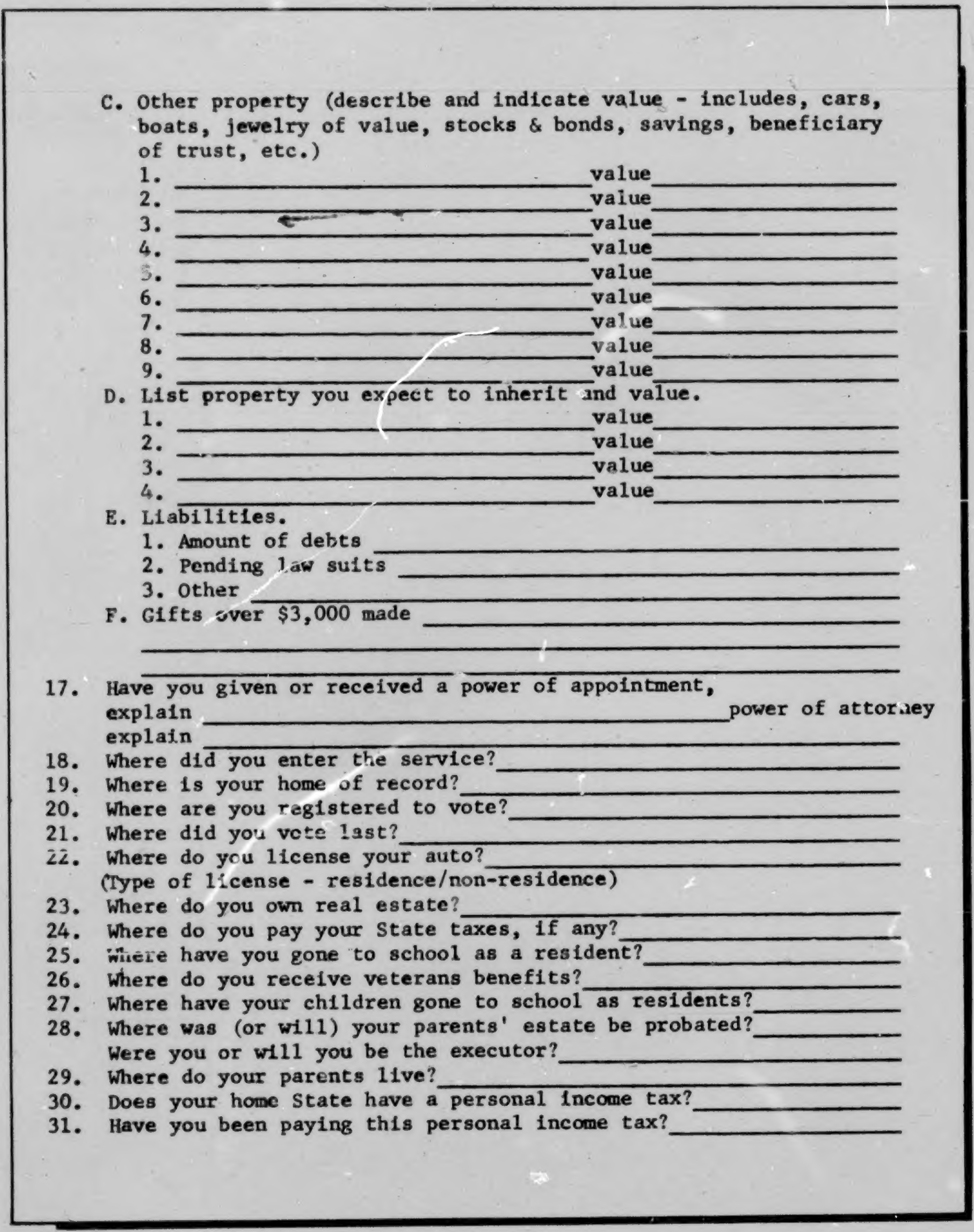
Figure 14-2.—Will Information Sheet (Long Form).



5. Primary beneficiary (usually spouse)____________________
6. Secondary beneficiary (usually children)____________________
____________________
7. Primary guardian (usually spouse)____________________
Alternate guardian____________________
and address____________________
8. Primary executor (usually spouse)____________________
Alternate executor____________________
and address____________________
Ancillary executor____________________
and address____________________
9. Special funeral or burial instructions (Note: It is generally not appropriate to indicate such instructions in your will; it is the responsibility of your next of kin to make such arrangements.)
____________________
____________________
____________________
10. Is bond (for faithful performance) desired for guardian__________
for executor__________
Generally, it is not desirable to require such bond as it is an added expense and burden on the person you are requesting perform these services.
11. Date came to California:____________________
12. Date of marriage:____________________
13. Do you have prior wills?____________________
Where are they?____________________
14. Does your spouse have a will?____________________
Many of the reasons that you should have a will apply to your spouse.
15. List property, if any, that you now own and which was acquired prior to marriage or which you received as a gift or inherited.
____________________
____________________
____________________
____________________
16. List of present assets
A. Land (real property including homes, lots, etc.)
1. __________ value__________ State where located__________
2. __________ value__________ State where located__________
3. __________ value__________ State where located__________
4. __________ value__________ State where located__________
B. Life Insurance (indicate type: whole life, term, group term, gov't)
1. __________ value__________
2. __________ value__________
3. __________ value__________
4. __________ value__________

192.108.2

Figure 14-2.—Will Information Sheet (Long Form)—(Continued).



C. Other property (describe and indicate value - includes, cars, boats, jewelry of value, stocks & bonds, savings, beneficiary of trust, etc.)

1. ______________________ value ______________
2. ______________________ value ______________
3. ______________________ value ______________
4. ______________________ value ______________
5. ______________________ value ______________
6. ______________________ value ______________
7. ______________________ value ______________
8. ______________________ value ______________
9. ______________________ value ______________

D. List property you expect to inherit and value.

1. ______________________ value ______________
2. ______________________ value ______________
3. ______________________ value ______________
4. ______________________ value ______________

E. Liabilities.

1. Amount of debts ______________________
2. Pending law suits ______________________
3. Other ______________________

F. Gifts over $3,000 made ______________________

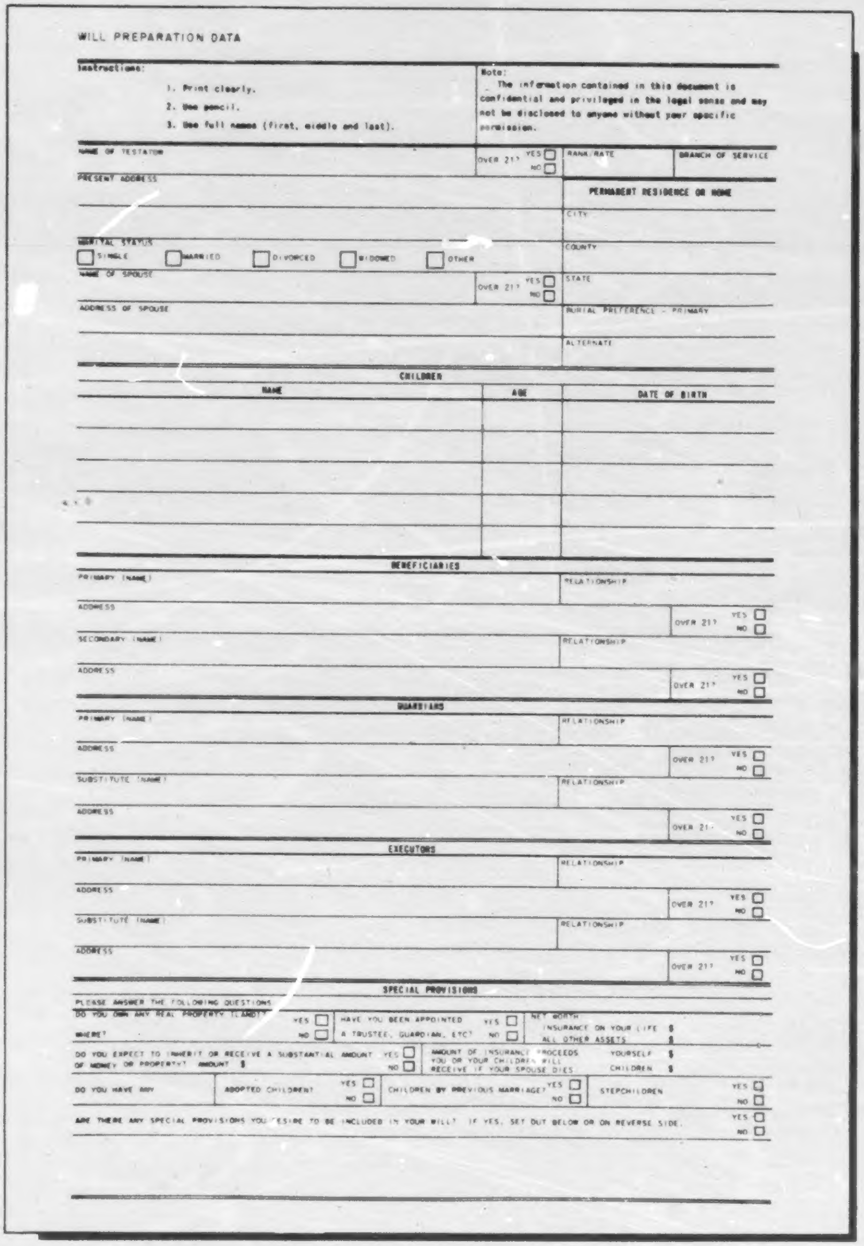
______________________________________

______________________________________

17. Have you given or received a power of appointment, explain ______________________ power of attorney explain ______________________
18. Where did you enter the service? ______________________
19. Where is your home of record? ______________________
20. Where are you registered to vote? ______________________
21. Where did you vote last? ______________________
22. Where do you license your auto? ______________________ (Type of license - residence/non-residence)
23. Where do you own real estate? ______________________
24. Where do you pay your State taxes, if any? ______________________
25. Where have you gone to school as a resident? ______________________
26. Where do you receive veterans benefits? ______________________
27. Where have your children gone to school as residents? ______________________
28. Where was (or will) your parents' estate be probated? ______________________ Were you or will you be the executor? ______________________
29. Where do your parents live? ______________________
30. Does your home State have a personal income tax? ______________________
31. Have you been paying this personal income tax? ______________________

192.108.3

Figure 14-2.–Will Information Sheet (Long Form)–(Continued).



WILL PREPARATION DATA

**Instructions:**

1. Print clearly.
2. Use pencil.
3. Use full names (first, middle and last).

**Note:**
The information contained in this document is confidential and privileged in the legal sense and may not be disclosed to anyone without your specific permission.

NAME OF TESTATOR
OVER 21? YES ☐ NO ☐
RANK/RATE
BRANCH OF SERVICE
PRESENT ADDRESS

**PERMANENT RESIDENCE OR HOME**
CITY
COUNTY
STATE
BURIAL PREFERENCE - PRIMARY
ALTERNATE

MARITAL STATUS
☐ SINGLE ☐ MARRIED ☐ DIVORCED ☐ WIDOWED ☐ OTHER
NAME OF SPOUSE
OVER 21? YES ☐ NO ☐
ADDRESS OF SPOUSE

**CHILDREN**

| NAME | AGE | DATE OF BIRTH |
|---|---|---|
| | | |
| | | |
| | | |
| | | |
| | | |

**BENEFICIARIES**

PRIMARY (NAME)
RELATIONSHIP
ADDRESS
OVER 21? YES ☐ NO ☐
SECONDARY (NAME)
RELATIONSHIP
ADDRESS
OVER 21? YES ☐ NO ☐

**GUARDIANS**

PRIMARY (NAME)
RELATIONSHIP
ADDRESS
OVER 21? YES ☐ NO ☐
SUBSTITUTE (NAME)
RELATIONSHIP
ADDRESS
OVER 21? YES ☐ NO ☐

**EXECUTORS**

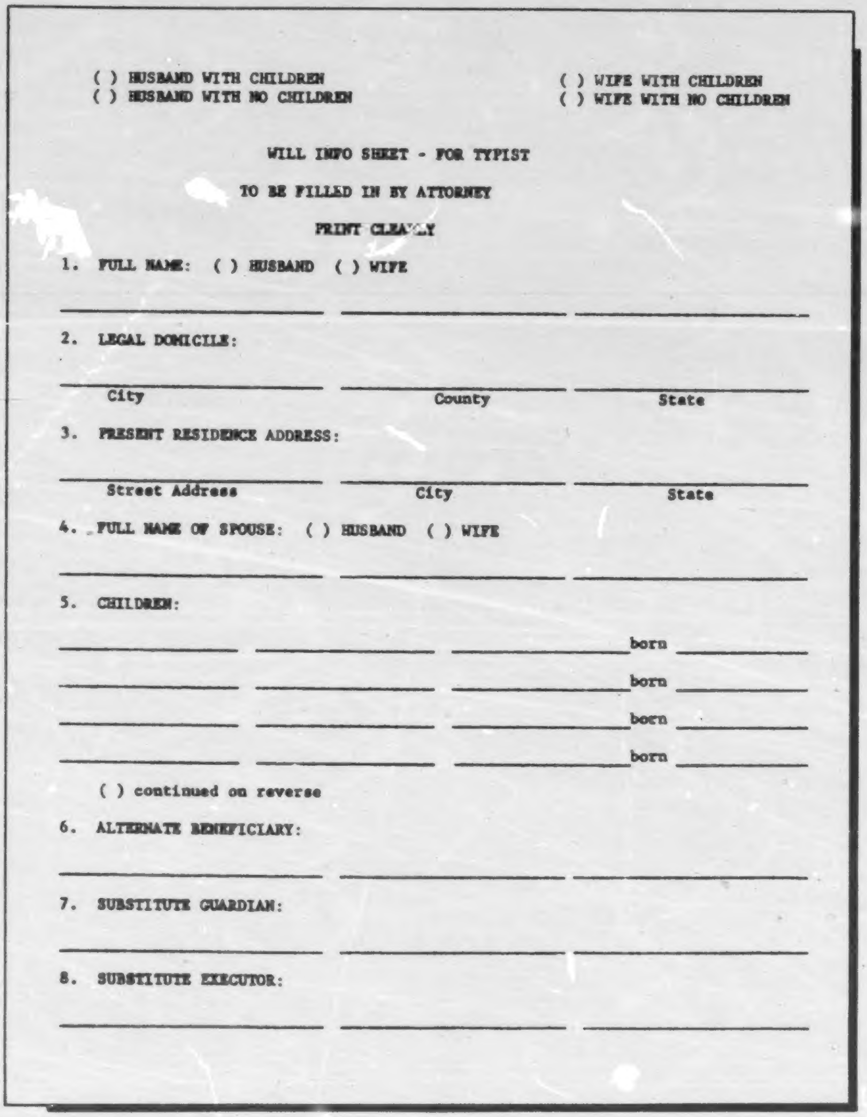
PRIMARY (NAME)
RELATIONSHIP
ADDRESS
OVER 21? YES ☐ NO ☐
SUBSTITUTE (NAME)
RELATIONSHIP
ADDRESS
OVER 21? YES ☐ NO ☐

**SPECIAL PROVISIONS**

PLEASE ANSWER THE FOLLOWING QUESTIONS
DO YOU OWN ANY REAL PROPERTY (LAND)? YES ☐ NO ☐
WHERE?
HAVE YOU BEEN APPOINTED A TRUSTEE, GUARDIAN, ETC? YES ☐ NO ☐
NET WORTH
INSURANCE ON YOUR LIFE $
ALL OTHER ASSETS $
DO YOU EXPECT TO INHERIT OR RECEIVE A SUBSTANTIAL AMOUNT OF MONEY OR PROPERTY? AMOUNT $ YES ☐ NO ☐
AMOUNT OF INSURANCE PROCEEDS YOU OR YOUR CHILDREN WILL RECEIVE IF YOUR SPOUSE DIES
YOURSELF $
CHILDREN $
DO YOU HAVE ANY
ADOPTED CHILDREN? YES ☐ NO ☐
CHILDREN BY PREVIOUS MARRIAGE? YES ☐ NO ☐
STEPCHILDREN YES ☐ NO ☐
ARE THERE ANY SPECIAL PROVISIONS YOU DESIRE TO BE INCLUDED IN YOUR WILL? IF YES, SET OUT BELOW OR ON REVERSE SIDE. YES ☐ NO ☐

192.109

Figure 14-3.—Will Information Sheet (Short Form).



( ) HUSBAND WITH CHILDREN
( ) HUSBAND WITH NO CHILDREN

( ) WIFE WITH CHILDREN
( ) WIFE WITH NO CHILDREN

WILL INFO SHEET - FOR TYPIST

TO BE FILLED IN BY ATTORNEY

PRINT CLEARLY

1. FULL NAME: ( ) HUSBAND ( ) WIFE

_______________ _______________ _______________

2. LEGAL DOMICILE:

_______________ _______________ _______________
City County State

3. PRESENT RESIDENCE ADDRESS:

_______________ _______________ _______________
Street Address City State

4. FULL NAME OF SPOUSE: ( ) HUSBAND ( ) WIFE

_______________ _______________ _______________

5. CHILDREN:

_______________ _______________ _______________ born _______________
_______________ _______________ _______________ born _______________
_______________ _______________ _______________ born _______________
_______________ _______________ _______________ born _______________

( ) continued on reverse

6. ALTERNATE BENEFICIARY:

_______________ _______________ _______________

7. SUBSTITUTE GUARDIAN:

_______________ _______________ _______________

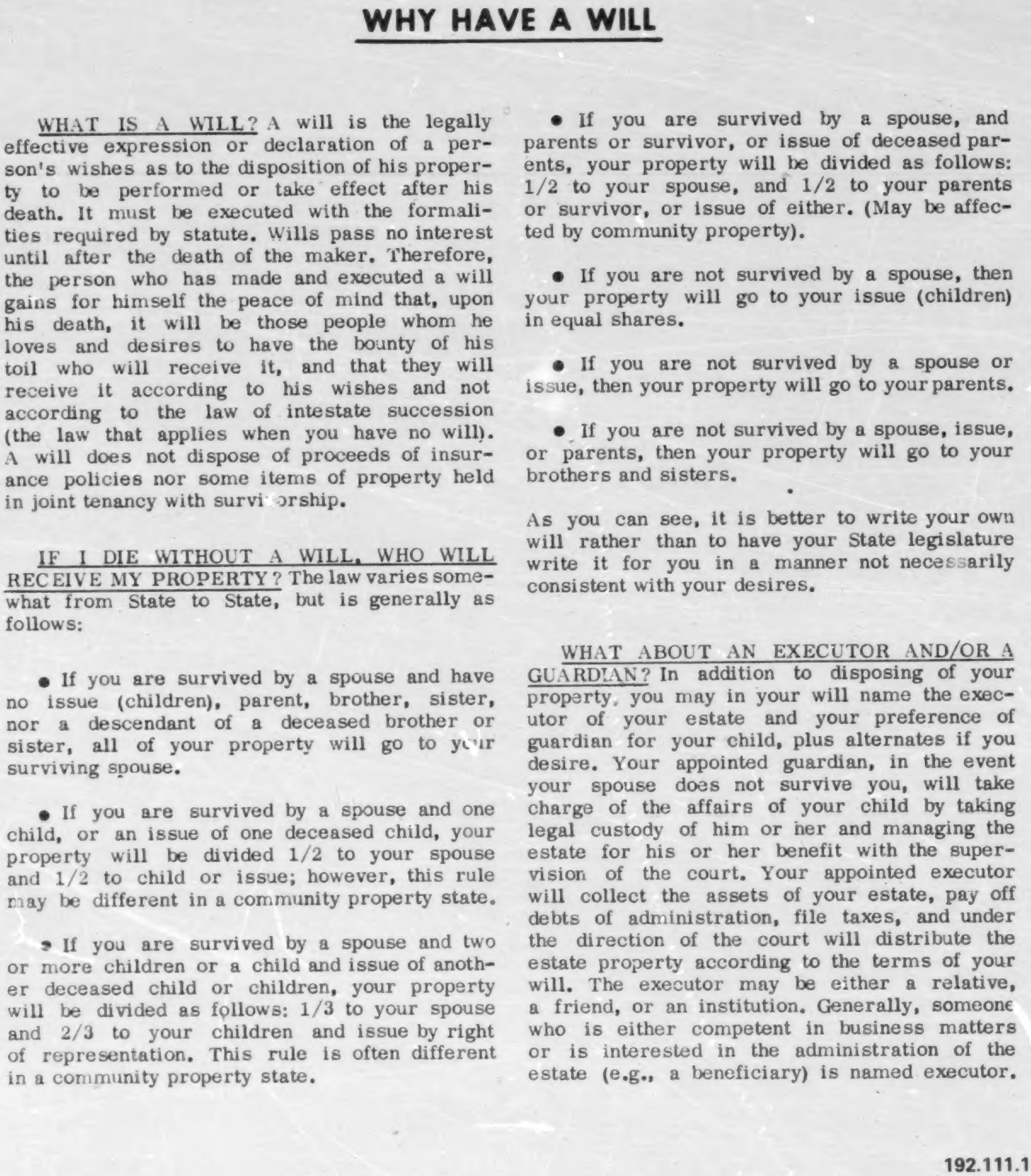
8. SUBSTITUTE EXECUTOR:

_______________ _______________ _______________

192.110

Figure 14-4.—Will Information Sheet (Typist Worksheet).

of view, normally the parties have a fixed income, even where both parties are working, and have grown accustomed to spending their income accordingly. They have one set of obligations (rent, food, utilities, clothing, insurance, auto, transportation, etc.) Suddenly, when they part company, they still have the same fixed income but find they have two sets of obligations, resulting in a lower standard of living for both parties. The point of this is to highlight the problems of a divorce, and, if divorce is the only solution, to show the parties that a tremendous readjustment by both will be necessary.



## WHY HAVE A WILL

WHAT IS A WILL? A will is the legally effective expression or declaration of a person's wishes as to the disposition of his property to be performed or take effect after his death. It must be executed with the formalities required by statute. Wills pass no interest until after the death of the maker. Therefore, the person who has made and executed a will gains for himself the peace of mind that, upon his death, it will be those people whom he loves and desires to have the bounty of his toil who will receive it, and that they will receive it according to his wishes and not according to the law of intestate succession (the law that applies when you have no will). A will does not dispose of proceeds of insurance policies nor some items of property held in joint tenancy with survivorship.

IF I DIE WITHOUT A WILL, WHO WILL RECEIVE MY PROPERTY? The law varies somewhat from State to State, but is generally as follows:

- If you are survived by a spouse and have no issue (children), parent, brother, sister, nor a descendant of a deceased brother or sister, all of your property will go to your surviving spouse.

- If you are survived by a spouse and one child, or an issue of one deceased child, your property will be divided 1/2 to your spouse and 1/2 to child or issue; however, this rule may be different in a community property state.

- If you are survived by a spouse and two or more children or a child and issue of another deceased child or children, your property will be divided as follows: 1/3 to your spouse and 2/3 to your children and issue by right of representation. This rule is often different in a community property state.

- If you are survived by a spouse, and parents or survivor, or issue of deceased parents, your property will be divided as follows: 1/2 to your spouse, and 1/2 to your parents or survivor, or issue of either. (May be affected by community property).

- If you are not survived by a spouse, then your property will go to your issue (children) in equal shares.

- If you are not survived by a spouse or issue, then your property will go to your parents.

- If you are not survived by a spouse, issue, or parents, then your property will go to your brothers and sisters.

As you can see, it is better to write your own will rather than to have your State legislature write it for you in a manner not necessarily consistent with your desires.

WHAT ABOUT AN EXECUTOR AND/OR A GUARDIAN? In addition to disposing of your property, you may in your will name the executor of your estate and your preference of guardian for your child, plus alternates if you desire. Your appointed guardian, in the event your spouse does not survive you, will take charge of the affairs of your child by taking legal custody of him or her and managing the estate for his or her benefit with the supervision of the court. Your appointed executor will collect the assets of your estate, pay off debts of administration, file taxes, and under the direction of the court will distribute the estate property according to the terms of your will. The executor may be either a relative, a friend, or an institution. Generally, someone who is either competent in business matters or is interested in the administration of the estate (e.g., a beneficiary) is named executor.

192.111.1

Figure 14-5.—Why Have a Will.

## A WORD ABOUT TERMINOLOGY

INTESTATE: Without making a will. A person is said to die intestate when he dies without making a will, or dies without leaving anything to testify what his wishes were with respect to the disposal of his property after his death.

INTESTATE LAWS: These are the statutes which provide and prescribe the devolution of estates of persons who die without disposing of their estates by law, will, or testament.

TESTATE (also TESTATOR): One who has made a will; one who dies leaving a will.

HEIR: Designates a successor to property either by will or by law.

PER STIRPES: By representation. Generally used to mean that the children of a deceased child will receive what the deceased child would receive had he or she lived.

ISSUE: All persons who have descended from a common ancestor. Generally defined by the will to include lineal descendants of all degrees.

COMMUNITY PROPERTY: Consists of (1) all property acquired after marriage by husband or wife, or both, while domiciled in a community property State, except: (a) property acquired by gift, bequest, devise or descent and (b) real property situated outside of the State.

QUASI-COMMUNITY PROPERTY: Personal property wherever situated, and real property in a community property State, of a decedent, acquired by the decedent while domiciled outside of State which would have been the community property of the decedent and the surviving spouse had the decedent been domiciled in the State at the time of its acquisition, or acquired in exchange for real or personal property wherever situated and so acquired.

## WHAT DOES PROBATE MEAN, AND WHAT IS A COURT OF PROBATE?

PROBATE: Is the act or process of proving before a duly authorized person that a document produced before him for official recognition and registration, and alleged to be the last will and testament of a certain deceased person, is such in reality. In other words, probate is a process that establishes the validity of a will.

A COURT OF PROBATE: Is a court having jurisdiction over the probate of wills, the grant of administration, and the supervision of the management and settlement of estates of decedents, including the collection of assets, the allowance of claims, and the distribution of the estate. Therefore, the purpose of probate is to prove the will, protect the creditors, protect the estate, declare the legal beneficiaries, and order distribution of the assets of the estate to the lawful beneficiaries. When a will has been probated, it becomes legally effective and can thereafter be legally executed and the estate distributed.

## INFORMATION FOR EXECUTION OF A LAST WILL AND TESTAMENT

You have just received your Last Will and Testament providing for the disposition of your property effective upon your death. Read the original to be sure that you understand the meaning and effect of the terms therein and that it expresses your desires as to the disposition of your property. The following information is given for your guidance:

1. EXECUTION OF THE WILL. Assemble three adult witnesses who are not related to you and who are not named in the Will in any manner. Tell these witnesses that you are about to execute your Will and would like for them to see you and each of the witnesses sign. BE SURE THAT YOU AND EACH WITNESS SEE EACH OTHER SIGN THE WILL. THEN;

On the last page, in the spaces provided,

192.111.2

Figure 14-5.–Why Have A Will–(Continued).

fill in the place and date of signing. For example:

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Arlington, Virginia, this the 1st day of January, 1974. NEXT:

Sign your name, on the line provided, as it appears in the Will. BE SURE EACH WITNESS SEES YOU DO THIS. Have each witness then sign and fill in the place of his or her permanent address. Be sure that you and each of the other two witnesses see each witness sign. Sign only the original of the Will.

2. CAUTION. If at all possible avoid having your shipmates act as witnesses. In the event of a disaster probate of the Will is complicated. Do not make any changes, corrections, interlineations, cancellations, addition, substitutions or notations on the original.

3. EFFECT OF MARRIAGE, DIVORCE, ETC. Events such as marriage, birth of a child, divorce and death of a named beneficiary, occuring after the making of a Will, often affect its provisions. Therefore, whenever such an event occurs, you should review your Will with the assistance of an attorney.

4. REVOCATION. Because your Will is not effective until your death, you can revoke or change it at any time. However, if you desire to do so, you should consult with your attorney as to the necessary formalities.

5. DISPOSITION OF PREVIOUS WILLS. After this Will has been signed by you and the witnesses, destroy the old Will, if any, and all copies thereof.

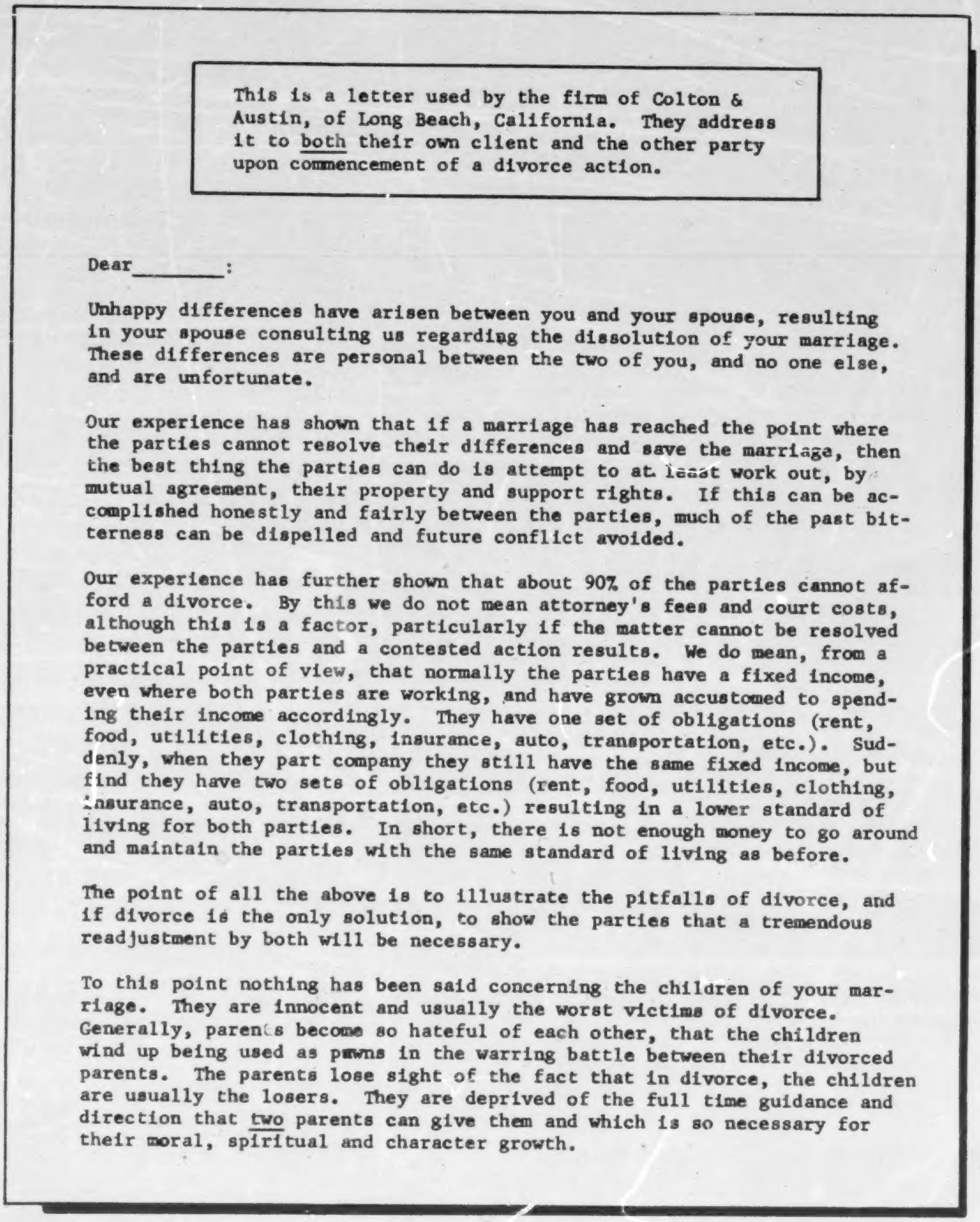
6. SAFEKEEPING. After you have executed your Will, place it in a safe place but where it may be found. DON'T HIDE IT. It is wise to notify your executor where your Will may be found. If you are a member of Navy Mutual Aid you may deliver your Will to it for safekeeping.

NOTE: These instructions do not apply to the execution of a Will in Louisiana by a person domiciled in Louisiana or having real property located in that State, in which case consult an attorney practicing in Louisiana. Nor does this apply to a Texas Will, which requires a Notary if real property is devised.

The term "per stirpes," if used in your Will, means that the children of a named beneficiary who predeceased you will divide equally the share of that beneficiary.

192.111.3

Figure 14-5.—Why Have a Will—(Continued).



This is a letter used by the firm of Colton & Austin, of Long Beach, California. They address it to both their own client and the other party upon commencement of a divorce action.

Dear________:

Unhappy differences have arisen between you and your spouse, resulting in your spouse consulting us regarding the dissolution of your marriage. These differences are personal between the two of you, and no one else, and are unfortunate.

Our experience has shown that if a marriage has reached the point where the parties cannot resolve their differences and save the marriage, then the best thing the parties can do is attempt to at least work out, by mutual agreement, their property and support rights. If this can be accomplished honestly and fairly between the parties, much of the past bitterness can be dispelled and future conflict avoided.

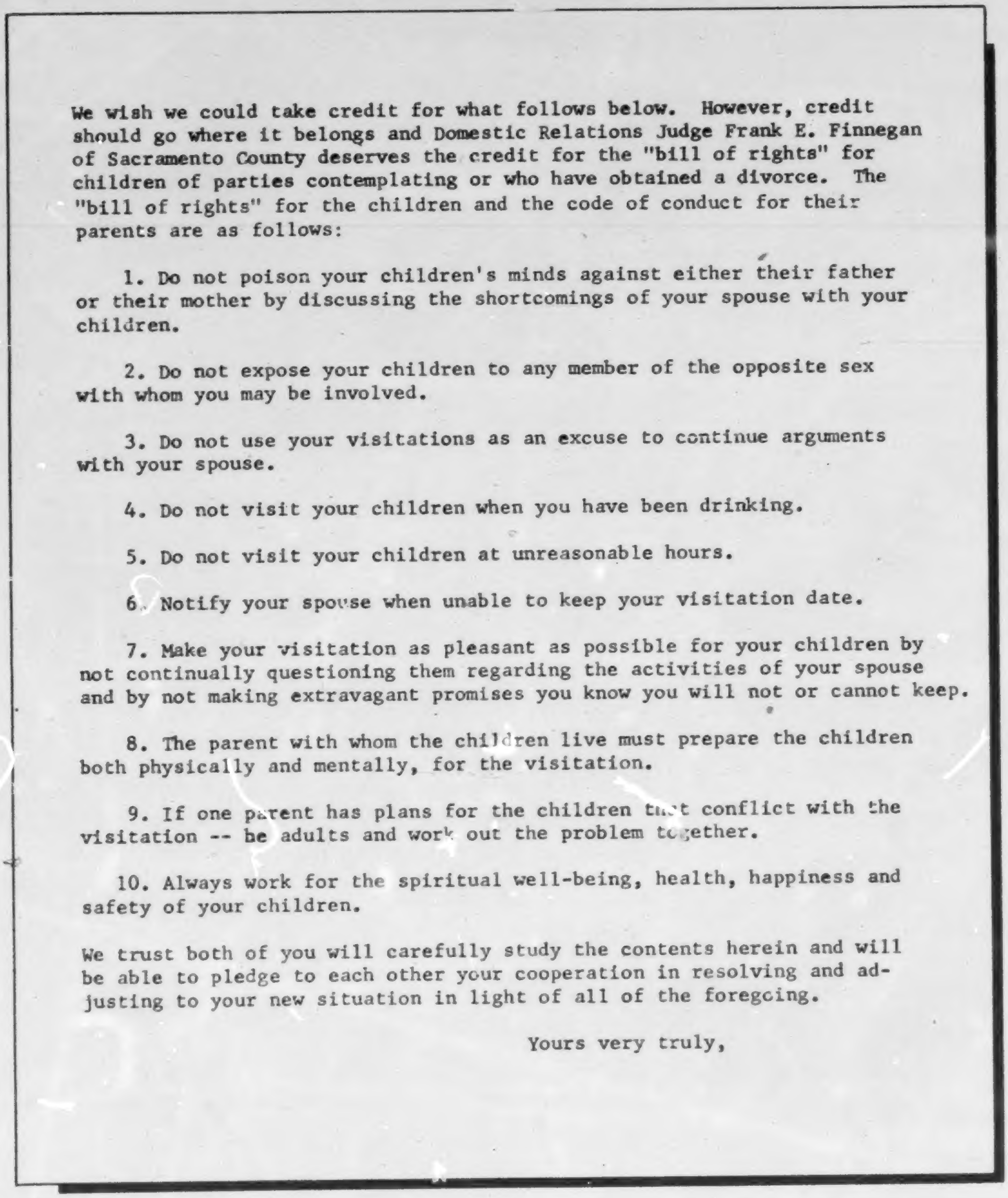
Our experience has further shown that about 90% of the parties cannot afford a divorce. By this we do not mean attorney's fees and court costs, although this is a factor, particularly if the matter cannot be resolved between the parties and a contested action results. We do mean, from a practical point of view, that normally the parties have a fixed income, even where both parties are working, and have grown accustomed to spending their income accordingly. They have one set of obligations (rent, food, utilities, clothing, insurance, auto, transportation, etc.). Suddenly, when they part company they still have the same fixed income, but find they have two sets of obligations (rent, food, utilities, clothing, insurance, auto, transportation, etc.) resulting in a lower standard of living for both parties. In short, there is not enough money to go around and maintain the parties with the same standard of living as before.

The point of all the above is to illustrate the pitfalls of divorce, and if divorce is the only solution, to show the parties that a tremendous readjustment by both will be necessary.

To this point nothing has been said concerning the children of your marriage. They are innocent and usually the worst victims of divorce. Generally, parents become so hateful of each other, that the children wind up being used as pawns in the warring battle between their divorced parents. The parents lose sight of the fact that in divorce, the children are usually the losers. They are deprived of the full time guidance and direction that two parents can give them and which is so necessary for their moral, spiritual and character growth.

192.112.1

**Figure 14-6.—Sample Letter to Divorce Client and Spouse.**



We wish we could take credit for what follows below. However, credit should go where it belongs and Domestic Relations Judge Frank E. Finnegan of Sacramento County deserves the credit for the "bill of rights" for children of parties contemplating or who have obtained a divorce. The "bill of rights" for the children and the code of conduct for their parents are as follows:

1. Do not poison your children's minds against either their father or their mother by discussing the shortcomings of your spouse with your children.

2. Do not expose your children to any member of the opposite sex with whom you may be involved.

3. Do not use your visitations as an excuse to continue arguments with your spouse.

4. Do not visit your children when you have been drinking.

5. Do not visit your children at unreasonable hours.

6. Notify your spouse when unable to keep your visitation date.

7. Make your visitation as pleasant as possible for your children by not continually questioning them regarding the activities of your spouse and by not making extravagant promises you know you will not or cannot keep.

8. The parent with whom the children live must prepare the children both physically and mentally, for the visitation.

9. If one parent has plans for the children that conflict with the visitation -- be adults and work out the problem together.

10. Always work for the spiritual well-being, health, happiness and safety of your children.

We trust both of you will carefully study the contents herein and will be able to pledge to each other your cooperation in resolving and adjusting to your new situation in light of all of the foregoing.

Yours very truly,

192.112.2

Figure 14-6.—Sample Letter to Divorce Client and Spouse—(Continued).

## AUTOMOBILES

There is often no romance greater than that of the young sailor and his automobile. In many cases the automobile represents the only major asset of the sailor. As part of the preventive law program, the legal assistance office should have information on hand to inform clients about the many consumer-oriented services that can help the buyer get the best possible deal on his car. Further, clients should be alerted to the potential problems involved in buying a car, such as a used car sold "as is," oral representations not backed up in writing, taxes, insurance, tie-in financing, and general haggling over misunderstandings created by the car salesman. Later, problems may develop in paying off the loan. Repossessions and deficiency judgments, where allowed, become critical problems for the client.

The modern new-car buyer is usually involved in a one-sided negotiation. Conditioned by the fixed prices that they pay at a store, most people are reluctant—or even afraid—to bargain. When a car salesman offers a figure slightly below the sticker price, the buyer generally jumps at the good deal and signs up. Usually he has made a good deal only for the salesman. There are many good services that can help the buyer get the best possible deal on his car. *Edmund's* annual new, used, and foreign-car base-price publications (available in most exchanges), various articles in national magazines, *Car and Driver* and *Motor Trend*, the *National Dealers Official Used Car Guide* (the so-called "Blue Book" or "Red Book,") and a service called Car/Puter, Inc., are examples of sources of valuable information for the car buyer. Some of these services reveal the dealer's cost price of new cars and accessories, including the cost of delivery and preparation.

The registration of automobiles is an important matter with many ramifications. You should have information on hand to advise the client as to where a car should be registered, and in whose name or names. If the client is legally a minor in the State of his residence or station, this factor must be taken into consideration. If the auto is registered in joint names, such as husband and wife, the serviceman may lose some of his tax protection under the Soldiers' and Sailors' Civil Relief Act.

A checklist of key people (and their addresses) concerned with vehicular law, such as the State Motor Vehicle Department, local offices, and naval base police and registration facilities, should be maintained in the legal assistance office. This should be readily available to the receptionist, so that he or she can provide this assistance when that is the only information requested.

## TAXES

The legal assistance officer should be able to handle the whole gamut of taxes at the Federal, State, and local levels. He should be able to field moderately complicated Federal and State income tax questions and have a working knowledge of the Federal estate and gift taxes, State inheritance tax, and local property taxes.

Of particular interest to the serviceman and his dependents are the tax law provisions dealing with moving expenses, expenses away from the duty station, and factors which determine domicile and residence.

As a Legalman in the legal assistance office you should be trained to help clients with simple tax returns which do not involve legal questions. Neither the legal assistance officer nor you or others in the legal assistance office should sign income tax returns as the one who prepared the returns for the client. This role should be limited to assisting the client in preparing his own return or, in the case of the lawyer, in answering questions involving legal issues or interpretations.

## FINANCES

In many instances you can help clients with budgetary problems, under the supervision of the legal assistance officer. Many young enlisted personnel have never made a budget. Potential financial problems can be avoided with the successful utilization of even a simple budget. Conscientious use of the budget will discourage impulse buying and the temptation to incur too much "easy credit." Budget and financial counseling may be available through your local Navy Relief Society chapter.

There are some cases in which bankruptcy is the only solution to a serviceman's problem.

First, however, the use of a Chapter 13, Wage Earner Plan (DA Pam 27-12, p. 8-3) should be carefully considered. If at all possible, bankruptcy should be avoided. The disadvantage of bankruptcy should be explained to the client. The "stay" protections of the Soldiers' and Sailors' Civil Relief Act should be utilized when necessary, but the client should understand that his relief under the Act is only temporary and that he must pay his obligations after active duty within the prescribed time periods of the Act.

## CONTRACTS AND CONSUMER LAW

Many States are enacting laws changing the age of majority from 21 years of age to 18 years of age, and you should know what the law is in the State in which your legal assistance office is located. In those States, servicemen and dependents age 18 and over must assume full responsibility for the contracts, written and oral, which they make. As part of the preventive law program, emphasis should be placed on the potential pitfalls which await the individuals who do not take the time to read the contract they sign when entering into a business transaction, including a simple sale in a store.

Servicemen and their dependents should be particularly careful when dealing with door-to-door salesmen. Most States today have statutes which provide a three day "cooling-off," or recision, period for the buyer in a door-to-door sale. The client should know whether his State law provides for such a recision of the contract. If so, he may want to take advantage of the statutory protection in the case of a purchase which was made under high-pressure tactics.

In recent years many laws at the Federal and State level have been enacted to protect consumers from fraudulent and sharp practices of businessmen. The principal Federal laws enacted have been the Truth-in-Lending Law, the Fair Credit Reporting Act, the Consumer Product Safety Law, and the Federal Trade Commission Law. The FTC has been very active in promulgating trade regulation rules and official guides for business practices dealing with all types of consumer activity. At the State level, many States presently have laws dealing with deceptive trade practices, class actions, credit billings, product safety warranties, and flame-retardent products.

## LANDLORD-TENANT AND REAL ESTATE

A large number of the legal assistance staff's cases are likely to involve landlord-tenant problems. A telephone call or two to the landlord will often resolve the problem for the client. In some cases it may be necessary to look into the situation a little more carefully to achieve a fair resolution of the matter, but such cases should not take so much time and effort as to cut too deeply into the daily workload of the office. Unfortunately, many problems arise because of a factual dispute, not a legal issue. For example, a landlord might refuse to return the security deposit at the termination of the rental because he maintains that the property was left unclean and in a state of disrepair. The client-renter maintains that he left the property as clean as possible and that he did not damage the property in any way. Some of the problems can be avoided if the client is forewarned of some of the possible pitfalls. Certainly it would be beneficial to have clients bring the lease or rental agreement, before they sign, to have the salient provisions and their obligations, as well as their rights, pointed out. Likewise, the desirability of taking pictures of the property inside as well as outside before entering the premises can be of great significance in terms of proving "cleanliness," and "normal wear and tear" upon vacating the property. Making a list of apparent defects and submitting them to the landlord prior to assuming occupancy can also be of help, as can having an independent witness examine the property.

Often problems arise with Government housing. The client should receive just as much consideration and courtesy from Uncle Sam, as a landlord, as he should from a private landlord.

Knowledge of policies, laws and regulations concerning equal opportunity housing must be part of the legal assistance staff's working tools.

## POWERS OF ATTORNEY

There is a tendency to over-use powers of attorney in the Navy. Part of the legal assistance officer's job is to advise the serviceman whether he really needs to execute a power of attorney, giving consideration to his current and future activities.

If it is decided that the client does need a power of attorney, the use of a special power of attorney, specifying the powers to be granted and limiting the time period for the power to run, is preferable to the use of general power of attorney. Also, the standard "missing" clause (DA Pam 27-12, p. 32-8) should be included in every power of attorney.

## CIVIL RIGHTS

One of the legal assistance officer's responsibilities is to advise personnel concerning the civil rights laws. See SECNAVINST 5350.1 series.

## VOTING INFORMATION

The policy of the Navy Department is to give maximum assistance to members, and their dependents in the exercise of their right to vote in all elections held in their home election districts. If the legal assistance office is tasked with the duty of implementing Navy voting policy, then you, as a Legalman, should ensure that voting information, pamphlets, posters, and other materials are disseminated or otherwise made available to military personnel at your command. You should use all available means to carry out the intent and purpose of Navy voting policy.

The Federal Post Card Application for Absentee Ballot (FPCA) or Standard Form 76 (see fig. 14-7) which is used in all federal elections must, by law, be made available to all eligible personnel and their dependents. Normally, certain individuals will be designated as voting representatives to discharge this task. It may be that you will be assigned these duties. In any event, as a legal assistance Legalman, you should ensure that these application forms are available for dissemination. *The Voting Assistance Guide* (NAVEDTRA 46007) lists the voting residency requirements of the several States. Generally, the State, City, or Township in which a person lived prior to his entrance into the Navy is considered his voting residence, but this is not always true. Current domicile is the important factor here.

## THE LEGAL ASSISTANCE OFFICE

When planning the layout of the legal assistance office, the principles of good office organization discussed in Chapter 2 should be taken into consideration.

Ideally, all Navy military personnel and their dependents should have access to a conveniently located legal assistance office. As explained below, the Navy has attempted to implement such a policy where available resources make it a feasible proposition.

Below we look at some of the items peculiar to legal assistance offices in particular.

### ESTABLISHMENT OF OFFICES

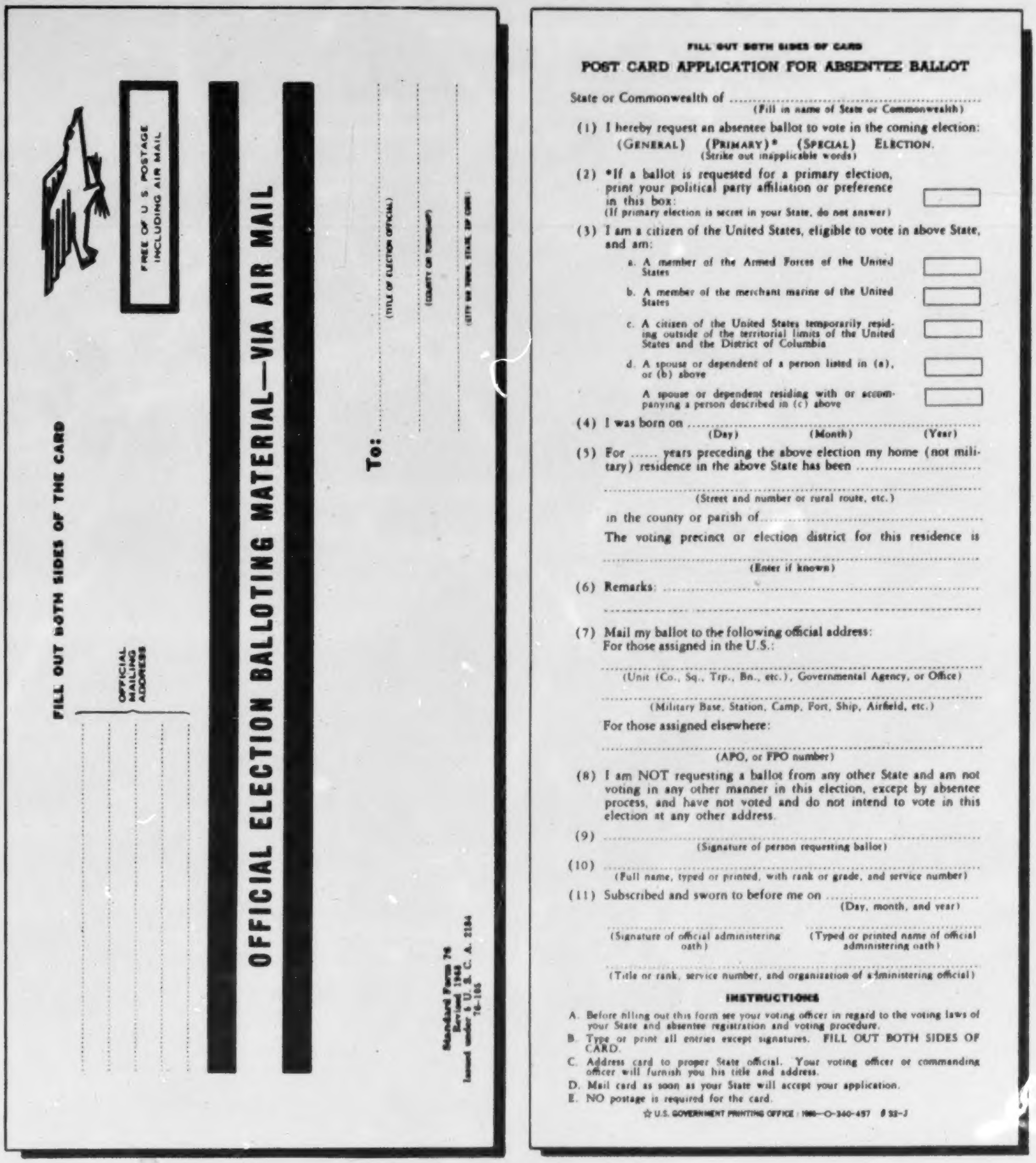
A legal assistance office must be established at each Navy Law Center (in Fiscal 1975 the law centers will become Naval Legal Services Offices under an officer-in-charge) and at each Marine Corps command exercising general court-martial jurisdiction. In addition, any commanding officer having a legal assistance officer attached, assigned to, or available to his command, may establish a legal assistance office. The legal assistance office must be disestablished when no person qualified to perform legal assistance duties is attached, assigned or available to the command. Whenever a legal assistance office is established or disestablished, the Judge Advocate General must be notified.

### LOCATION

Each legal assistance office should be conveniently located so as to be easily accessible to all persons eligible for legal assistance; and also, it should be provided with facilities which will enable private consultation with legal assistance clients. Information as to the location and the hours of the legal assistance office, and as to the nature of services available, should be posted in an appropriate and conspicuous place within the command.

### OFFICE LAYOUT AND DESIGN

A primary concern in office layout is the efficient use of space, including requirements for



FILL OUT BOTH SIDES OF THE CARD

OFFICIAL MAILING ADDRESS

FREE OF U S POSTAGE INCLUDING AIR MAIL

OFFICIAL ELECTION BALLOTING MATERIAL—VIA AIR MAIL

To: ..............................
(TITLE OF ELECTION OFFICIAL)
..............................
(COUNTY OR TOWNSHIP)
..............................
(CITY OR TOWN, STATE, ZIP CODE)

Standard Form 76
Revised 1968
Issued under 5 U. S. C. A. 2184
76-105

FILL OUT BOTH SIDES OF CARD

**POST CARD APPLICATION FOR ABSENTEE BALLOT**

State or Commonwealth of ..............................
(Fill in name of State or Commonwealth)

(1) I hereby request an absentee ballot to vote in the coming election:
(GENERAL) (PRIMARY)* (SPECIAL) ELECTION.
(Strike out inapplicable words)

(2) *If a ballot is requested for a primary election, print your political party affiliation or preference in this box: ☐
(If primary election is secret in your State, do not answer)

(3) I am a citizen of the United States, eligible to vote in above State, and am:
- a. A member of the Armed Forces of the United States ☐
- b. A member of the merchant marine of the United States ☐
- c. A citizen of the United States temporarily residing outside of the territorial limits of the United States and the District of Columbia ☐
- d. A spouse or dependent of a person listed in (a), or (b) above ☐
- A spouse or dependent residing with or accompanying a person described in (c) above ☐

(4) I was born on ..............................
(Day) (Month) (Year)

(5) For ...... years preceding the above election my home (not military) residence in the above State has been ..............................
..............................
(Street and number or rural route, etc.)
in the county or parish of ..............................
The voting precinct or election district for this residence is
..............................
(Enter if known)

(6) Remarks: ..............................
..............................

(7) Mail my ballot to the following official address:
For those assigned in the U.S.:
..............................
(Unit (Co., Sq., Trp., Bn., etc.), Governmental Agency, or Office)
..............................
(Military Base, Station, Camp, Fort, Ship, Airfield, etc.)
For those assigned elsewhere:
..............................
(APO, or FPO number)

(8) I am NOT requesting a ballot from any other State and am not voting in any other manner in this election, except by absentee process, and have not voted and do not intend to vote in this election at any other address.

(9) ..............................
(Signature of person requesting ballot)

(10) ..............................
(Full name, typed or printed, with rank or grade, and service number)

(11) Subscribed and sworn to before me on ..............................
(Day, month, and year)

..............................
(Signature of official administering oath)

..............................
(Typed or printed name of official administering oath)

..............................
(Title or rank, service number, and organization of administering official)

INSTRUCTIONS

A. Before filling out this form see your voting officer in regard to the voting laws of your State and absentee registration and voting procedure.
B. Type or print all entries except signatures. FILL OUT BOTH SIDES OF CARD.
C. Address card to proper State official. Your voting officer or commanding officer will furnish you his title and address.
D. Mail card as soon as your State will accept your application.
E. NO postage is required for the card.

☆ U.S. GOVERNMENT PRINTING OFFICE : [illegible]—O-340-457 # 52-J

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Figure 14-7.—Standard Form 76—Post Card Application for Absentee Ballot.

client reception, interviewing, the library, filing, and storage areas. Office appearance is important, since it has a significant impact on the client's impression of the program.

These considerations must be dealt with realistically within the framework of the budget and existing physical facilities. The opportunity to design an office layout will be rare, but thought must be channeled toward meaningful modification of present facilities wherever appropriate.

The office traffic pattern should be analyzed. Naturally, a receptionist should be in a position to assist clients as they first enter the office. Filing cabinets, form drawers, and the like should be located reasonably near to those who will be using them the most.

Other important considerations include adequate lighting and ventilation, sufficient space in which to conduct interviews in privacy, and control of distracting noises. There should be signs directing the client to the office from all usual building entrances.

## INTAKE PROCEDURES

Variations of the intake procedure are myriad; however, it is important that the following basic elements be considered in all intake operations:

- Legal Assistance appointment log (figure 14-8).
- Client order (determining who is next).
- Preliminary interview (preferably conducted by Legalman).
- Opening of case (recording client's name, etc.)
- Attorney interview.
- Opening of client's file.

### Suggested Procedure

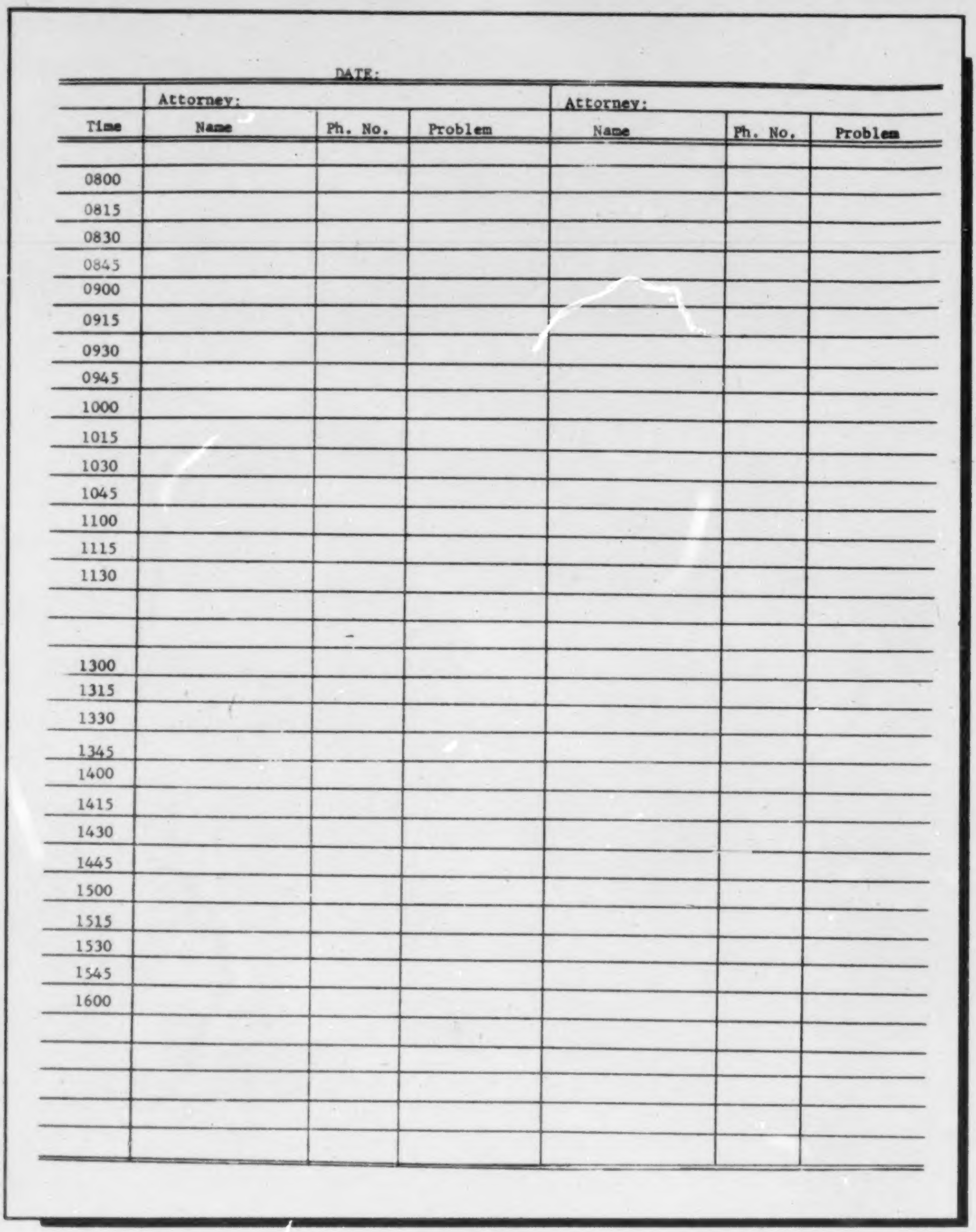
The following narrative describes a suggested intake operation:

Client enters the office and gives name to receptionist or Legalman. If he had an appointment, his name is checked off on the appointment log. See figure 14-8 for a suggested appointment log. If no appointment, his name is placed on a separate list for interview by a legal assistance officer as the apointment schedule and office workload permit. In the event that a lawyer is not available to interview a "walk-in" client, or the client cannot wait for possible lawyer availability and his problem is not an emergency, he should be processed through the "opening of case" step shown above, and given an appointment to return to see a legal assistance officer.

The client is given basic information and a Legal Affairs Questionnaire (NAVJAG 5801/10) to complete while waiting. See figure 14-9. Any prior files relating to the same individual should be pulled and given to the legal assistance officer at the time of the initial interview on this new matter.

The client is referred to a Legalman who reviews the basic information and the Legal Affairs Questionnaire already prepared by the client. If a Legalman is not available, this can be done by the receptionist. The interviewing areas should be enclosed and located adjacent to the reception area, where possible. When an office has a Legalman, separate facilities should be provided for interviewing. If the receptionist must serve as the interviewer, sufficient privacy should be provided by locating the receptionist as far from the client seating area as possible without actually being physically removed from the reception area.

In the majority of cases you are the initial contact point that the Navy member makes when he seeks legal assistance. During this initial exchange with the member, who is in actuality your customer, you should be cooperative and understanding, for he may be burdened with very perplexing personal problems. In this regard, it might help if you reflect upon those occasions when you needed and sought aid at other Navy offices, (e.g., disbursing, household effects, sick bay, etc.). How were you received by the Navy personnel administering those services? Did you feel their assistance was less than 100 per cent? If you had a negative reaction and believe that you were accorded shoddy treatment, then conversely you should see that you do not handle your customer in the same manner. Remember, it is people such as you who have a hand in molding the attitudes of members towards the Navy. Your assiduous



DATE:

| | Attorney: | | | Attorney: | | |
|---|---|---|---|---|---|---|
| Time | Name | Ph. No. | Problem | Name | Ph. No. | Problem |
| | | | | | | |
| 0800 | | | | | | |
| 0815 | | | | | | |
| 0830 | | | | | | |
| 0845 | | | | | | |
| 0900 | | | | | | |
| 0915 | | | | | | |
| 0930 | | | | | | |
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| 1000 | | | | | | |
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| 1045 | | | | | | |
| 1100 | | | | | | |
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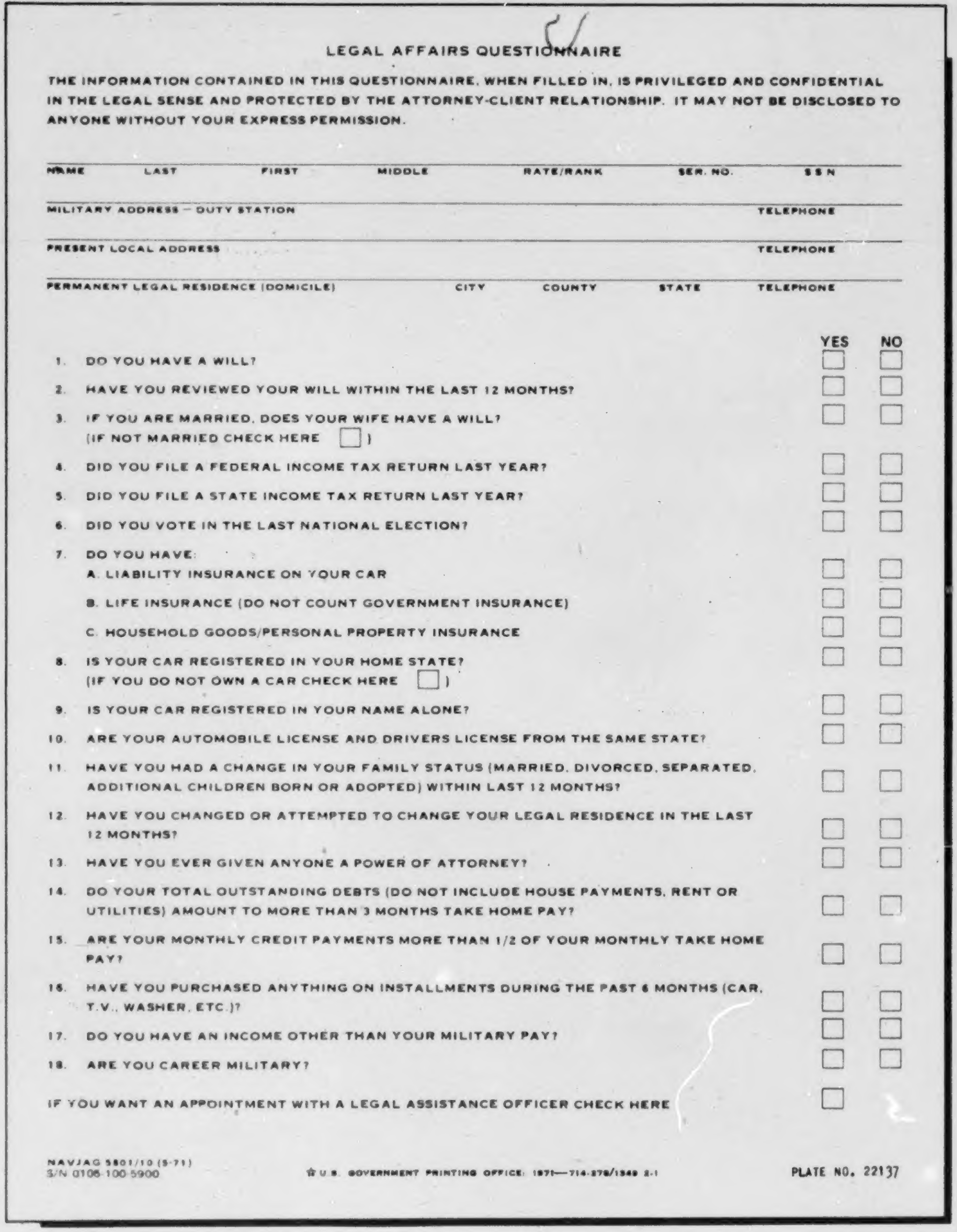
Figure 14-8.—Legal Assistance Appointment Log.



LEGAL AFFAIRS QUESTIONNAIRE

THE INFORMATION CONTAINED IN THIS QUESTIONNAIRE, WHEN FILLED IN, IS PRIVILEGED AND CONFIDENTIAL IN THE LEGAL SENSE AND PROTECTED BY THE ATTORNEY-CLIENT RELATIONSHIP. IT MAY NOT BE DISCLOSED TO ANYONE WITHOUT YOUR EXPRESS PERMISSION.

NAME LAST FIRST MIDDLE RATE/RANK SER. NO. SSN

MILITARY ADDRESS — DUTY STATION TELEPHONE

PRESENT LOCAL ADDRESS TELEPHONE

PERMANENT LEGAL RESIDENCE (DOMICILE) CITY COUNTY STATE TELEPHONE

| | | YES | NO |
|---|---|---|---|
| 1. | DO YOU HAVE A WILL? | ☐ | ☐ |
| 2. | HAVE YOU REVIEWED YOUR WILL WITHIN THE LAST 12 MONTHS? | ☐ | ☐ |
| 3. | IF YOU ARE MARRIED, DOES YOUR WIFE HAVE A WILL?<br>(IF NOT MARRIED CHECK HERE ☐) | ☐ | ☐ |
| 4. | DID YOU FILE A FEDERAL INCOME TAX RETURN LAST YEAR? | ☐ | ☐ |
| 5. | DID YOU FILE A STATE INCOME TAX RETURN LAST YEAR? | ☐ | ☐ |
| 6. | DID YOU VOTE IN THE LAST NATIONAL ELECTION? | ☐ | ☐ |
| 7. | DO YOU HAVE:<br>A. LIABILITY INSURANCE ON YOUR CAR | ☐ | ☐ |
| | B. LIFE INSURANCE (DO NOT COUNT GOVERNMENT INSURANCE) | ☐ | ☐ |
| | C. HOUSEHOLD GOODS/PERSONAL PROPERTY INSURANCE | ☐ | ☐ |
| 8. | IS YOUR CAR REGISTERED IN YOUR HOME STATE?<br>(IF YOU DO NOT OWN A CAR CHECK HERE ☐) | ☐ | ☐ |
| 9. | IS YOUR CAR REGISTERED IN YOUR NAME ALONE? | ☐ | ☐ |
| 10. | ARE YOUR AUTOMOBILE LICENSE AND DRIVERS LICENSE FROM THE SAME STATE? | ☐ | ☐ |
| 11. | HAVE YOU HAD A CHANGE IN YOUR FAMILY STATUS (MARRIED, DIVORCED, SEPARATED, ADDITIONAL CHILDREN BORN OR ADOPTED) WITHIN LAST 12 MONTHS? | ☐ | ☐ |
| 12. | HAVE YOU CHANGED OR ATTEMPTED TO CHANGE YOUR LEGAL RESIDENCE IN THE LAST 12 MONTHS? | ☐ | ☐ |
| 13. | HAVE YOU EVER GIVEN ANYONE A POWER OF ATTORNEY? | ☐ | ☐ |
| 14. | DO YOUR TOTAL OUTSTANDING DEBTS (DO NOT INCLUDE HOUSE PAYMENTS, RENT OR UTILITIES) AMOUNT TO MORE THAN 3 MONTHS TAKE HOME PAY? | ☐ | ☐ |
| 15. | ARE YOUR MONTHLY CREDIT PAYMENTS MORE THAN 1/2 OF YOUR MONTHLY TAKE HOME PAY? | ☐ | ☐ |
| 16. | HAVE YOU PURCHASED ANYTHING ON INSTALLMENTS DURING THE PAST 6 MONTHS (CAR, T.V., WASHER, ETC.)? | ☐ | ☐ |
| 17. | DO YOU HAVE AN INCOME OTHER THAN YOUR MILITARY PAY? | ☐ | ☐ |
| 18. | ARE YOU CAREER MILITARY? | ☐ | ☐ |

IF YOU WANT AN APPOINTMENT WITH A LEGAL ASSISTANCE OFFICER CHECK HERE ☐

NAVJAG 5801/10 (5-71)
S/N 0106-100-5900

☆ U.S. GOVERNMENT PRINTING OFFICE: 1971—714-278/1349 2-1

PLATE NO. 22137

192.115

Figure 14-9.—Legal Affairs Questionnaire (NAVJAG Form 5801/10).

efforts on behalf of others will aid the member in the formation of a positive reaction toward the legal assistance office and consequently the Navy. Your efforts to better the existence of your fellow Navy member will also contribute to the overall morale and efficiency of the command and of the entire Navy.

Once you have greeted the member and put him at ease by indicating your willingness to assist him, your job is to determine the nature of his problem. This entails separating legal matters from those which are ministerial in nature. Beyond this, you are to divide the legal problems into two groups: (1) those problems to which you can provide solutions by providing factual information from sources at hand, (e.g., tax information) or by the preparation of documents (e.g., power of attorney) for review by the legal assistance officer, and (2), those problems which require the attention of the legal assistance officer at the outset.

After completion of the form and the preliminary interview, the client is introduced to the lawyer. At the conclusion of the consultation with the client, the lawyer should complete a Case History Sheet (see figure 14-10), noting in detail the date, the facts recited by the client, and the advice given. The sheet MUST remain in the file and appropriate entries made EACH time advice is given or new information is received. This procedure is extremely important as an aid to any lawyer handling the case. (These files are of a confidential nature and must not be made available to other than the legal assistance officer, or the client.)

## THE LAW LIBRARY

It is necessary for the legal assistance officer to have a thorough understanding of the entire law library. Chapter 3 sets forth procedures for establishing and maintaining a complete law library, such as in use in a law center (Naval Legal Services Office). Ordinarily, only a small portion of the law center library materials need be maintained in the legal assistance office.

### Legal Assistance Reference Material

The Judge Advocate General periodically furnishes directly to legal assistance officers such professional information, reference material, procedural suggestions and recommendations as he may deem advisable to enable legal assistance officers to render legal services. Reference materials are than property of the Judge Advocate General and must be returned to the Office of the Judge Advocate General whenever a legal assistance office is disestablished.

### Use of Other Facilities

Arrangements should be made with the local civilian bar association, law school, or public law library for use of their facilities. A JAGC reservist with a good law library may also be helpful. Consideration should be given to obtaining used law books in good condition in order to stretch the available budget. Local law newspapers or law book dealers often advertise the sale of such books.

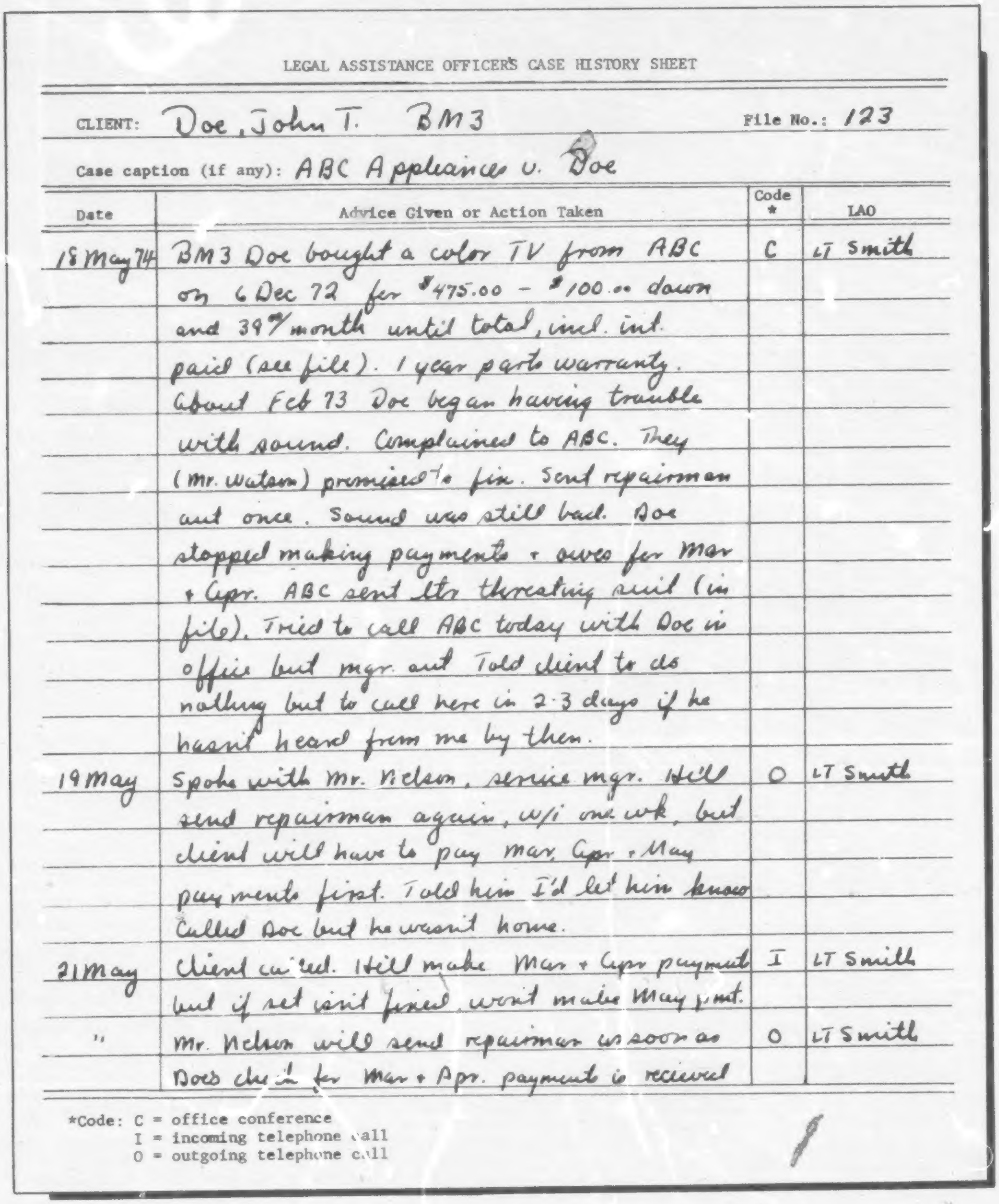
## THE RECEPTIONIST

Someone should be on duty whenever the office is open to receive clients who seek legal assistance. Other duties which can be carried out at the desk may also be assigned to the receptionist, but the ratio of additional work necessarily will vary with the volume of clients. Some offices are so arranged that the receptionist may type, calendar cases, and answer the telephone. The exact responsibilities to be assigned this position will have to be determined by the requirements of local circumstances.

From a public relations standpoint the position of receptionist is a very important one as it provides the first contact with clients and others when they come to the office. As the waiting room becomes more crowded, the more important the position becomes. Many clients are emotionally upset; many come with young and restless children and often they grow impatient if they must wait for any length of time to see a lawyer. All these factors add to the responsibilities of the receptionist. Consequently, an experienced, and understanding person should be assigned to this position.

## TELEPHONE CALLS

The person taking the incoming calls in an office should be able to answer inquiries of a



LEGAL ASSISTANCE OFFICER'S CASE HISTORY SHEET

CLIENT: Doe, John T. BM3

File No.: 123

Case caption (if any): ABC Appliances v. Doe

| Date | Advice Given or Action Taken | Code * | LAO |
|---|---|---|---|
| 18 May 74 | BM3 Doe bought a color TV from ABC on 6 Dec 72 for $475.00 - $100.00 down and 39.00/month until total, incl. int. paid (see file). 1 year parts warranty. About Feb 73 Doe began having trouble with sound. Complained to ABC. They (Mr. Watson) promised to fix. Sent repairman out once. Sound was still bad. Doe stopped making payments + owes for Mar + Apr. ABC sent ltr threating suit (in file). Tried to call ABC today with Doe in office but mgr. out Told client to do nothing but to call here in 2-3 days if he hasn't heard from me by then. | C | LT Smith |
| 19 May | Spoke with Mr. Nelson, service mgr. He'll send repairman again, w/i one wk, but client will have to pay Mar, Apr + May payments first. Told him I'd let him know Called Doe but he wasn't home. | O | LT Smith |
| 21 May | Client called. He'll make Mar + Apr payment but if set isn't fixed, won't make May pmt. | I | LT Smith |
| " | Mr. Nelson will send repairman as soon as Doe's check for Mar + Apr. payment is recieved | O | LT Smith |

*Code: C = office conference
I = incoming telephone call
O = outgoing telephone call

192.116

Figure 14-10.–Legal Assistance Officer's Case History Sheet.

general nature. All requests for specific or legal information should be transferred to a designated lawyer. If the question relates to a case in the hands of a particular attorney, the call should be referred to him. If the attorney is out of the office, his secretary or assistant should take the caller's name and number for the lawyer's information.

Offices should discourage giving legal advice by telephone. The telephone receptionist should advise the caller of this fact, and suggest that he make an appointment to see a lawyer.

The telephone receptionist should be supplied with information concerning staff absences such as time off for leave, holidays, or illness. If an inquiry comes in concerning a case handled by one who is absent, the call should be given to the lawyer substituting for the absentee.

The receptionist should always try to ascertain the general nature of the caller's problem. It will give an indication as to the length of time that may be necessary for an interview and the receptionist can advise the caller what papers should be brought in by consulting the check-list (figure 14-1).

Occasionally, the caller's problem will not be legal in nature. The receptionist should, therefore, have handy a list of telephone numbers in a rotary card file or card index system and direct the caller to the appropriate office. If doubt exists as to whether the problem is legal in nature, the call should be directed to a lawyer.

## OFFICE HOURS

The hours during which the legal assistance office is open must be sufficiently flexible to accommodate active duty personnel who cannot get time off to go to the office during normal working hours. When possible, at least one lawyer and one other person should staff the office on Saturday mornings and during certain evenings of the work week. Compensatory time off should also be arranged for those individuals who perform this additional duty. It is also possible to call on the local Naval Reserve Law Company which is normally able to give very effective help in this area through the Contributory Support Program.

## PUBLICIZING SERVICES

A legal assistance program can only be effective if those who are eligible for its services know about it, and know how and when they can avail themselves of it. The nature of the services available, the hours of operation, the location of the office, and the telephone number must be given wide publicity. Notices should be inserted frequently in base newspapers, posted on appropriate bulletin boards, and included in the Plan of the Day.

## LEGAL ASSISTANCE OFFICE FILES

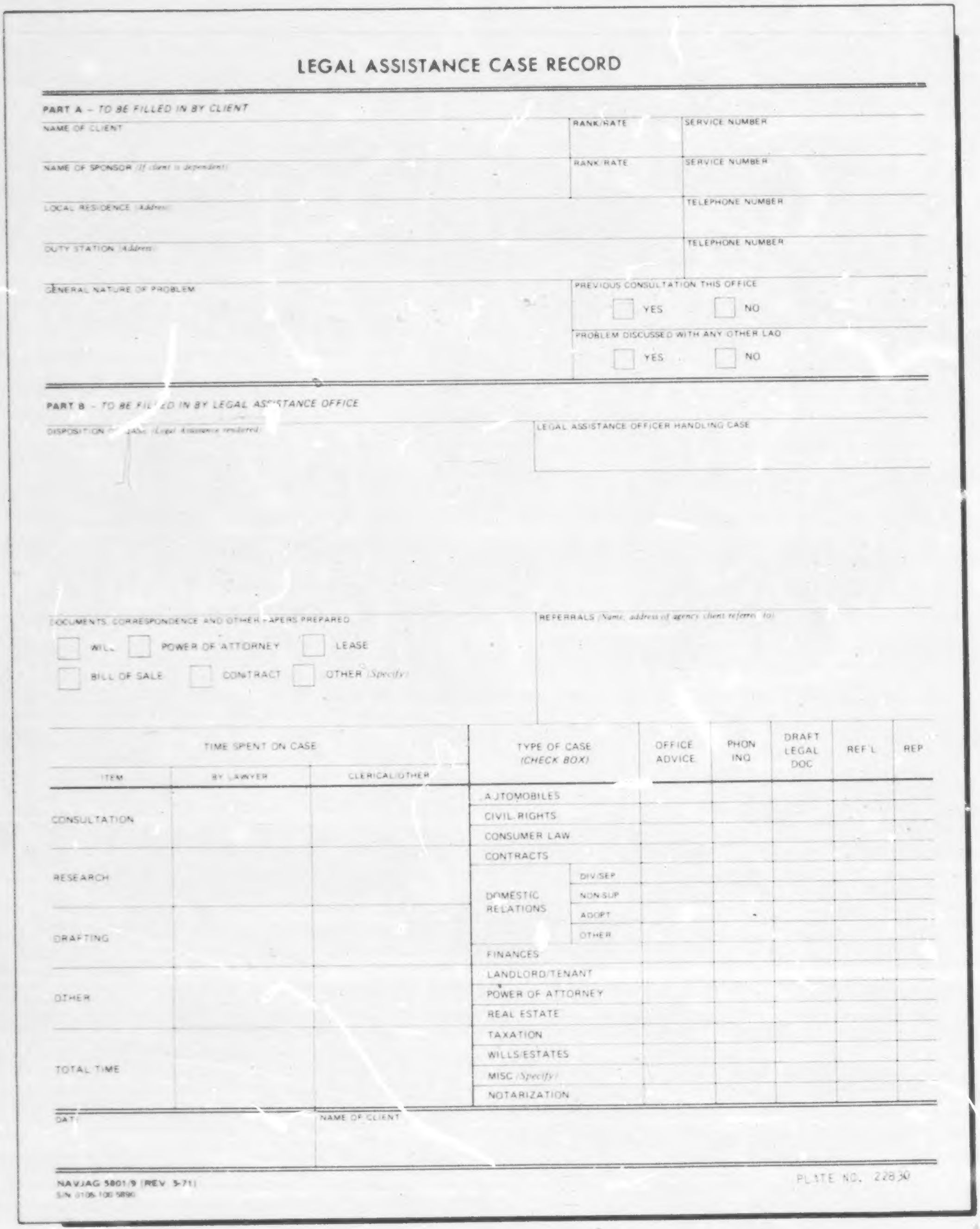
The legal assistance office filing system should be simple enough to operate for it to take only a minimum amount of time for anyone in the office to file papers; yet, everything in the files must be easily and immediately available when needed. Four types of files should be maintained. They are:

- Client case file.
- Office reading file.
- Reference material file.
- Forms file.

### The Client Case File

An individual client case file should normally be opened only for those matters which will require follow-up visits, correspondence, and the like. Current active files should contain all documents, papers, notes, et cetera, which relate to them. When a case has been completed, the case record and attorney's notes should be filed in the monthly file.

The record of each client's visit (or telephone call, if advice is given in this manner) should consist of, at a minimum, a completed Legal Assistance Case Record (NAVJAG 5801/9) or similar locally prepared form. See figure 14-11. It should contain a detailed description of the client's problem and the advice given. Where there is inadequate space on this form, a supplementary sheet containing the attorney's notes should be attached. The Chronological Record of Service (SF 600) or Sick Call Treatment Record (NAVMED 6150/3) can easily be



LEGAL ASSISTANCE CASE RECORD

**PART A** – *TO BE FILLED IN BY CLIENT*

NAME OF CLIENT
RANK/RATE
SERVICE NUMBER
NAME OF SPONSOR *(If client is dependent)*
RANK/RATE
SERVICE NUMBER
LOCAL RESIDENCE *(Address)*
TELEPHONE NUMBER
DUTY STATION *(Address)*
TELEPHONE NUMBER
GENERAL NATURE OF PROBLEM
PREVIOUS CONSULTATION THIS OFFICE
☐ YES ☐ NO
PROBLEM DISCUSSED WITH ANY OTHER LAO
☐ YES ☐ NO

**PART B** – *TO BE FILLED IN BY LEGAL ASSISTANCE OFFICE*

DISPOSITION OF CASE *(Legal Assistance rendered)*
LEGAL ASSISTANCE OFFICER HANDLING CASE

DOCUMENTS, CORRESPONDENCE AND OTHER PAPERS PREPARED
☐ WILL ☐ POWER OF ATTORNEY ☐ LEASE
☐ BILL OF SALE ☐ CONTRACT ☐ OTHER *(Specify)*

REFERRALS *(Name, address of agency client referred to)*

| TIME SPENT ON CASE | | |
|---|---|---|
| ITEM | BY LAWYER | CLERICAL/OTHER |
| CONSULTATION | | |
| RESEARCH | | |
| DRAFTING | | |
| OTHER | | |
| TOTAL TIME | | |

| TYPE OF CASE *(CHECK BOX)* | | OFFICE ADVICE | PHON INQ | DRAFT LEGAL DOC | REF'L | REP |
|---|---|---|---|---|---|---|
| AUTOMOBILES | | | | | | |
| CIVIL RIGHTS | | | | | | |
| CONSUMER LAW | | | | | | |
| CONTRACTS | | | | | | |
| DOMESTIC RELATIONS | DIV/SEP | | | | | |
| | NON-SUP | | | | | |
| | ADOPT | | | | | |
| | OTHER | | | | | |
| FINANCES | | | | | | |
| LANDLORD/TENANT | | | | | | |
| POWER OF ATTORNEY | | | | | | |
| REAL ESTATE | | | | | | |
| TAXATION | | | | | | |
| WILLS/ESTATES | | | | | | |
| MISC *(Specify)* | | | | | | |
| NOTARIZATION | | | | | | |

DATE
NAME OF CLIENT

**NAVJAG 5801/9 (REV. 5-71)**
S/N 0106-100-5890

PLATE NO. 22830

192.117

Figure 14-11.–Legal Assistance Case Record (NAVJAG 5801/9).

adapted to this use. A locally prepared form similar to that contained in figure 14-10 may also be used. All action taken by an attorney, including consultation, telephone calls, research, et cetera, and his opinion and advice, must be clearly entered on the attorney's notes. The best time to do this is immediately after the action. Sample entries are also contained in figure 14-10.

If the case is resolved in one visit (or perhaps one consultation and a follow up visit to execute a document), a client case file would not normally be opened. The client's case can be opened, disposed of, and the Legal Assistance Case Record and any supplementary attorney's notes filed right away.

### Legal Assistance Office Reading File

A copy of each outgoing piece of correspondence should be placed in chronological order, most recent on top, in the monthly legal assistance office reading file. This file should be maintained separately from the regular office reading file. These files may be destroyed after two years. Material contained in the legal assistance reading files, as well as the individual client case files, is privileged.

### Reference Material File

A separate index and series of files should be kept for reference material other than that which would normally be placed in the library. Included in this category are notes, releases, pamphlets, bulletins, and the like not subject to being serialized or kept by category in loose-leaf or bound form. It is important that this system be kept up to date since these items are often highly relevant to pending cases.

### Forms File

A good, well-indexed form file can be of immeasurable importance to a legal assistance office, especially where it relates to matters of local practice. Considerable savings in time and effort can be made by reference to a previously drafted form. However, don't let the form file get too large; throw out or change any forms in the file which are obsolete or no longer used.

### Filing Practices

All papers filed, other than original documents not susceptible to being punched, should be secured in the file. Letters and replies should be in chronological order, with the most recent on top.

Every effort should be made to see that files are not retained on lawyers' desks unless they are actually being used. In larger offices, a charge-out slip or card should be used to indicate where the file is located.

### File Responsibility

Responsibility for the maintenance of the client files should be assigned to one person. It is a mistake to assign the newest person in the office to the important job of filing. Good files are so vital that the BEST clerical assistant in the office should be assigned to this duty. Clear, written instructions must be given to the person responsible for the files.

### File Retention

When a matter has been concluded, the case file should be closed quickly in order to conserve valuable filing space. Only two items should be kept: (1) The Legal Assistance Case Record; and (2) the attorney's notes containing the file history. All documents, including those drafted by the legal assistance officer should be returned to the client together with whatever correspondence and memoranda the legal assistance officer determines that he should have. The remainder of the file can then be destroyed.

January of each year should be diaried for the destruction of all two-year-old closed files. For example, in January 1974, all files closed during 1971 could be destroyed.

## LEGAL ASSISTANCE OFFICE REPORTS

Only one regular report is required for the legal assistance program. This is an annual report of the number of legal assistance cases handled during the calendar year. This is broken down by types of cases, and includes time figures. (See section 1913, *JAG Manual*). The information required for the annual report is obtained from the individual Legal Assistance Case Records (NAVJAG 5801/9). This should be tabulated and transferred onto a Legal Assistance Report form (NAVJAG 5801/3) on a monthly basis. See figure 14-12. At the end of the year, the figures for the month of December can be added to the already prepared totals for the previous 11 months and the annual report quickly and conveniently prepared. This job should normally be done by a Legalman or secretary assigned to the legal assistance office.

It is well to note that any legal assistance provided by Reserve lawyers must also be reported. If the Reserve lawyer provides the legal assistance at a base legal assistance office, then each of the matters handled by him should be included in the reports made by the active duty legal assistance officer, as these matters are part of that office. In some areas, legal assistance is rendered by the Reserve lawyer in his own office. In that event, a separate report must be made by the commanding officer of the law company to which the Reserve lawyer is attached.

## BRANCH OFFICES

In some instances, naval facilities which are served by a particular law center or command legal office will simply be too far away for realistic access by its personnel to a legal assistance office. Evening and Saturday morning hours, discussed above, may help. However, where appropriate, the establishment of a branch legal assistance office should be considered.

The possibilities for a branch office in terms of physical facilities, staffing, and so forth, must depend on the circumstances of each situation. Where full-time assignment of a lawyer is not feasible, a "circuit riding" system might be established. Whenever possible, the lawyer should be accompanied by a Legalman or provided one at the branch office. This is of extreme importance if the legal assistance officer is to function efficiently and to devote the maximum time to the actual practice of law.

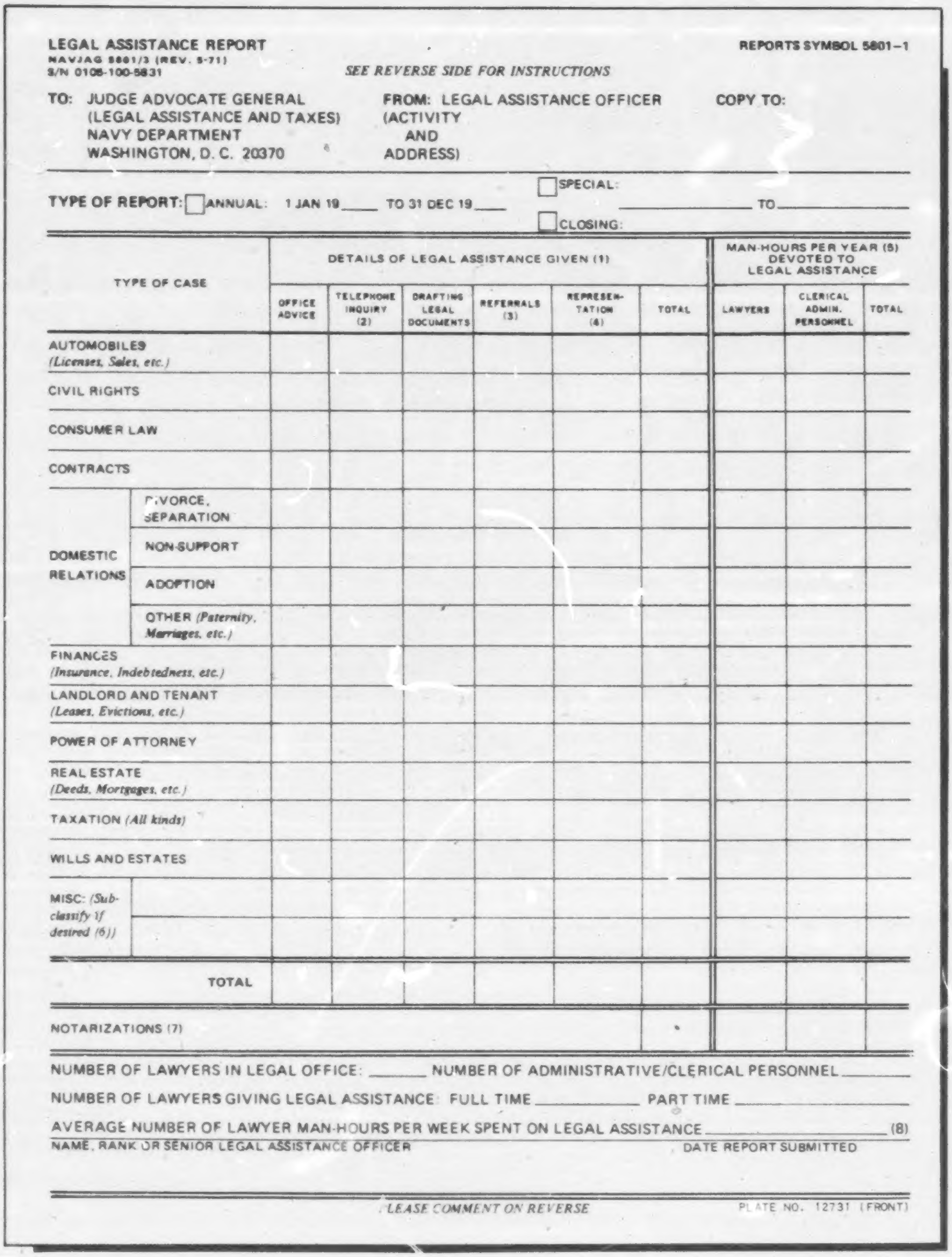
The hours and dates of operation as well as the services available must be widely publicized among the personnel to be served by the branch office. The very nature of a "circuit-riding" system implies that a missed opportunity to see a lawyer must wait weeks or longer for correction.

In conjunction with circuit-riding, a lay person permanently assigned to the facility should be trained as a legal assistant. Intake procedure through the third step listed previously above could be accomplished. A lawyer interview might then await the periodic arrival of the legal assistance officer, or a special appointment may be made for the client at the legal assistance office. The intake data can also be forwarded to the legal assistance officer for review before he sees the client.

## USE OF LEGALMEN

A large part of the success of the legal assistance program is dependent upon the effective use of nonlawyers in the legal assistance office. The legal assistance officer will very probably train you and other office personnel to save his time by taking over such duties as you can appropriately perform. The use of nonlawyers in these duties will permit legal assistance officers to increase individual productivity and significantly reduce errors. For example, a well-trained Legalman can conduct initial interviews with many prospective clients, investigate and assist in the preparation of trial matters, draft routine and standard papers, assist clients on general credit and budgetary problems, and maintain liaison with government agencies such as the Federal Trade Commission and the Social Security Administration. So long as the lawyer remains primarily responsible and vouches for the work product, he may employ nonlawyers to do any task for him except counsel clients about legal matters, engage directly in the practice of law, appear in court, or appear in formal proceedings which are part of the judicial process.

Your legal assistance officer will most likely develop a list of tasks which do not require the attention of a lawyer and which you will be expected to perform under his supervision. After the determination has been made that a task can



**LEGAL ASSISTANCE REPORT**
NAVJAG 5801/3 (REV. 5-71)
S/N 0105-100-5831

*SEE REVERSE SIDE FOR INSTRUCTIONS*

REPORTS SYMBOL 5801-1

TO: JUDGE ADVOCATE GENERAL
(LEGAL ASSISTANCE AND TAXES)
NAVY DEPARTMENT
WASHINGTON, D. C. 20370

FROM: LEGAL ASSISTANCE OFFICER
(ACTIVITY
AND
ADDRESS)

COPY TO:

TYPE OF REPORT: ☐ ANNUAL: 1 JAN 19____ TO 31 DEC 19____ ☐ SPECIAL: ☐ CLOSING: ____________ TO ____________

| TYPE OF CASE | | DETAILS OF LEGAL ASSISTANCE GIVEN (1) | | | | | | MAN-HOURS PER YEAR (5) DEVOTED TO LEGAL ASSISTANCE | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | | OFFICE ADVICE | TELEPHONE INQUIRY (2) | DRAFTING LEGAL DOCUMENTS | REFERRALS (3) | REPRESENTATION (4) | TOTAL | LAWYERS | CLERICAL ADMIN. PERSONNEL | TOTAL |
| AUTOMOBILES *(Licenses, Sales, etc.)* | | | | | | | | | | |
| CIVIL RIGHTS | | | | | | | | | | |
| CONSUMER LAW | | | | | | | | | | |
| CONTRACTS | | | | | | | | | | |
| DOMESTIC RELATIONS | DIVORCE, SEPARATION | | | | | | | | | |
| | NON-SUPPORT | | | | | | | | | |
| | ADOPTION | | | | | | | | | |
| | OTHER *(Paternity, Marriages, etc.)* | | | | | | | | | |
| FINANCES *(Insurance, Indebtedness, etc.)* | | | | | | | | | | |
| LANDLORD AND TENANT *(Leases, Evictions, etc.)* | | | | | | | | | | |
| POWER OF ATTORNEY | | | | | | | | | | |
| REAL ESTATE *(Deeds, Mortgages, etc.)* | | | | | | | | | | |
| TAXATION *(All kinds)* | | | | | | | | | | |
| WILLS AND ESTATES | | | | | | | | | | |
| MISC: *(Sub-classify if desired (6))* | | | | | | | | | | |
| | | | | | | | | | | |
| TOTAL | | | | | | | | | | |
| NOTARIZATIONS (7) | | | | | | | | | | |

NUMBER OF LAWYERS IN LEGAL OFFICE: ______ NUMBER OF ADMINISTRATIVE/CLERICAL PERSONNEL ________

NUMBER OF LAWYERS GIVING LEGAL ASSISTANCE: FULL TIME ___________ PART TIME ____________

AVERAGE NUMBER OF LAWYER MAN-HOURS PER WEEK SPENT ON LEGAL ASSISTANCE ____________ (8)

NAME, RANK OR SENIOR LEGAL ASSISTANCE OFFICER

DATE REPORT SUBMITTED

*PLEASE COMMENT ON REVERSE*

PLATE NO. 12731 (FRONT)

192.118

Figure 14-12.—Legal Assistance Report (NAVJAG Form 5801/3).

appropriately be performed by a nonlawyer, a good procedure to follow is to prepare a written, step-by-step checklist for each such task. It may take hours to establish the correct procedures for what seems to be a comparatively simple task. Nevertheless, it should be put down in writing so that it can be clearly understood by all concerned. Once the initial setup has been completed, training of all the clerical assistants in your office can be facilitated by using the checklist. These checklists should be kept in a notebook on your desk as a ready reference. When a satisfactory checklist for a task has been developed and approved by the legal assistance officer, it should be sent to OJAG (Legal Assistance & Taxes Division) so that it can be circulated to others. Let others benefit from your experience.

## LIAISON WITH OTHER GOVERNMENT AGENCIES

A working relationship between the legal assistance office and certain government agencies should be established. Where there are frequent dealings, personal contact should be made. These agencies include:

- IRS and State Tax Agencies–Many tax rules and policies are applicable only to the military. Special information relative to the serviceman's status should be gathered, and a supply of all the pertinent tax forms maintained in the office.
- Social Security Administration–Social Security rules and regulations are of special interest to career servicemen, retired servicemen and their dependents, and also dependents of deceased servicemen. A supply of the several brochures issued by the Social Security Administration should be maintained.
- Veterans Administration–A working knowledge of the VA procedures is especially important.
- Department of Justice–The Justice Department is responsible for enforcing the Soldiers' and Sailors' Civil Relief Act and the Civil Rights Act on behalf of the U.S. Government and its agents and servicemen. Liaison with the attorneys in that Department who are assigned to such duties will encourage proper enforcement under the Act. Lack of proper enforcement should be brought to the attention of the Judge Advocate General.

- Immigration and Naturalization Service–The immigration statutes are of particular importance for counseling non-citizen servicemen, such as those who come from the Philippines. The International Law Division of the Office of the Judge Advocate General maintains an expertise in this area as well.

- Customs Office–There are enough servicemen who return from foreign duty stations and encounter problems with the Customs Service to make this more than of merely academic interest to the legal assistance officer and his staff.

- CHAMPUS–Dependents of active-duty service personnel and retired servicemen and their dependents are eligible for CHAMPUS (Civilian Health and Medical Program of the Uniformed Services) benefits. If a claimant believes that a claim has been improperly denied (not just returned for further substantiation), he may send the claim to the Executive Director, OCHAMPUS, Denver, Colorado 80240, for consideration.

- Consumer Agencies (Federal, State, and Local)–The Federal Trade Commission, Food and Drug Administration, and the Federal Consumer Product Safety Commission maintain field offices in major cities in the United States. At the State and local level, many consumer protection divisions have been created in the State Attorney General's Offices and in the County Prosecuting Officer's agencies. There may even be separate consumer protection offices.

- State Motor Vehicle Departments–The legal assistance office staff should be familiar with the location of the closest motor vehicle department office and the *modus operandi* of that office. Also, a supply of the department's brochures and forms should be obtained for use by clients.

- Housing and Urban Development (HUD)–Which is responsible for assuring compliance with the 1968 Fair Housing Act.

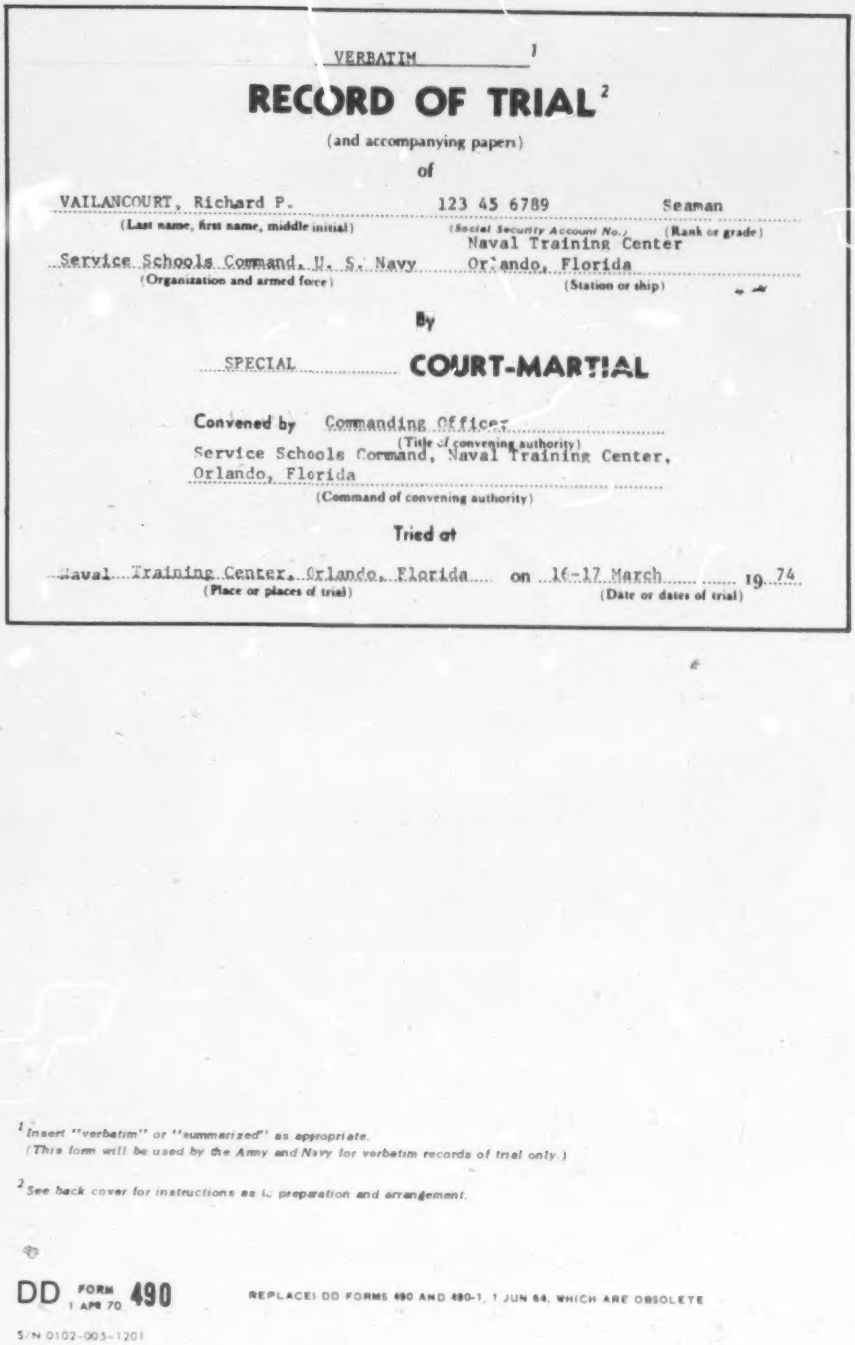
## COOPERATION WITH OTHER NAVY AGENCIES

The Navy Relief Society is commonly known only for its financial assistance. Among the other services provided is budget counseling for individuals and families who need help in managing their financial affairs. The Society can also make a loan to a serviceman to cover the costs involved in a Pilot Program case.

Navy Federal Credit Union services include debt consolidation loans, savings plans, and financial advice.

## APPENDIX I

# VERBATIM RECORD OF TRIAL



VERBATIM[1]

## RECORD OF TRIAL[2]

(and accompanying papers)

of

VAILANCOURT, Richard P. 123 45 6789 Seaman
(Last name, first name, middle initial) (Social Security Account No.) (Rank or grade)

Service Schools Command, U. S. Navy Naval Training Center Orlando, Florida
(Organization and armed force) (Station or ship)

By

SPECIAL **COURT-MARTIAL**

**Convened by** Commanding Officer
(Title of convening authority)
Service Schools Command, Naval Training Center, Orlando, Florida
(Command of convening authority)

**Tried at**

Naval Training Center, Orlando, Florida on 16-17 March 1974
(Place or places of trial) (Date or dates of trial)

---

[1] *Insert "verbatim" or "summarized" as appropriate.*
*(This form will be used by the Army and Navy for verbatim records of trial only.)*

[2] *See back cover for instructions as to preparation and arrangement.*

DD FORM 1 APR 70 490 REPLACES DD FORMS 490 AND 490-1, 1 JUN 64, WHICH ARE OBSOLETE

S/N 0102-005-1201

## CHRONOLOGY SHEET [1]

In the case of RICHARD P. VAILANCOURT
(Name of accused)

Date of alleged commission of earliest offense tried: 31 December 19 73

Date record forwarded to The Judge Advocate General: [2] 27 March 19 74

J. W. Robertson
J. W. ROBERTSON, Commander, JAGC, U. S. Navy
(Signature and rank of staff judge advocate or legal officer)

| | | Date 19 74 | Cumulative Elapsed Days [3] |
|---|---|---|---|
| 1. Accused restricted, arrested, or confined by military authority [4] | | 2 FEB | 0 |
| 2. Charges preferred (date of affidavit) | | 2 MAR | 28 |
| 3. Article 32 investigation (date of report) [5] | | – – – | – – |
| 4. Charges received by convening authority | | 3 MAR | 29 |
| 5. Charges referred for trial | | 3 MAR | 29 |
| 6. Sentence or acquittal | | 17 MAR | 43 |
| Less days: | | | |
| Accused sick, in hospital, or AWOL | 0 | | |
| Delay at request of defense | 0 | | |
| Total authorized deduction [6] | 0 | | |
| 7. Net elapsed days to sentence or acquittal | | | 43 |
| 8. Record received by convening authority (if other than GCM authority in item 9) | | 24 MAR | 50 |
| Action [7] | | 26 MAR | 52 |
| 9. Record received by officer authorized to convene GCM [2] | | | |
| Action [7] | | | |

REMARKS:

[1] In a case forwarded to The Judge Advocate General, the staff judge advocate or legal officer is responsible for completion of the Chronology Sheet. Trial counsel should report any authorized deductions and reasons for unusual delay in the trial of the case.

[2] Or supervisory authority under Article 65(c) (MCM, 1969 (Rev.), par. 94a(1),(2)).

[3] In computing days between two dates, disregard first day and count last day. The actual number of days in each month will be counted.

[4] Item 1 is not applicable when accused is not restricted, arrested, or confined, or when he is in confinement under a sentence or court-martial at time charges are preferred. Item 2 will be the zero date if Item 1 is not applicable.

[5] May not be applicable to trial by special court-martial.

[6] Only this item may be deducted.

[7] If sentence, as approved by convening authority under item 8, does not involve BCD, items 1 to 8 will be completed, and chronology signed, by such convening authority or his representative.

# RECORD OF TRIAL

of

VAILANCOURT, Richard P. (Last name, first name, middle initial) — 123 45 6789 (Social Security Account No.) — Seaman (Rank or grade)

Service Schools Command, U. S. Navy (Organization and armed force) — Naval Training Center, Orlando, Florida (Station or ship)

By

SPECIAL **COURT-MARTIAL**

**Convened by** Commanding Officer
(Title of convening authority)

Service Schools Command, Naval Training Center, Orlando, Florida
(Command of convening authority)

**Tried at**

Naval Training Center, Orlando, Florida, (Place or places of trial) on 16-17 March (Date or dates of trial) 19 74

| Index | Record |
|---|---|
| Article 39(a) Sessions: | |
| On 16 Mar 1974 | R- 1 |
| On 17 Mar 1974 | R- 25 |
| On | R- -.- |
| On | R- -.- |
| Introduction of counsel | R- 3 |
| Challenges | R- 11,12,13 |
| Arraignment | R- 13 |
| Motions | R- 8,16 |
| Pleas | R- 8 |
| Instructions on findings | R- 21 |
| Findings | R- 22,23 |
| Sentence | R- 25a |
| Proceedings in revision | R- None |

## TESTIMONY

| Name of Witness | Direct and Redirect | Cross and Recross | Court |
|---|---|---|---|
| **Prosecution** | | | |
| SN Robert C. Brown, USN | 14 | 14 | 14 |
| ENS Robert O. Lewis, USN | 15,23 | - - | - - |
| **Defense** | | | |
| BM1 Dale Francis, USN | 17 | | 18 |
| SN Richard P. Vailancourt, USN | 18 | 19 | - - |
| **Court** | | | |
| BM1 Dale Francis, USN | 19 | 21 | |

## EXHIBITS ADMITTED IN EVIDENCE

| Number or Letter | Description | Page Where— Offered | Page Where— Admitted |
|---|---|---|---|
| 1 | S/R pg 13(3) showing commencement of UA | 15 | 15 |
| 2 | S/R pg 6(1) record of previous conviction | 24 | 24 |

## COPIES OF RECORD[1]

1 copy of record furnished the accused as per attached certificate or receipt.

2 cop~~y~~(ies) of record forwarded herewith.

## RECEIPT FOR COPY OF RECORD[2]

I hereby acknowledge receipt of a copy of the above-described record of trial, delivered to me at Service Schools Command, NTC, Orlando, Florida, this 24th day of March, 1974.

Richard P. Vailancourt
RICHARD P. VAILANCOURT
(Signature of accused)

I hereby acknowledge receipt of a copy of the above-described record of trial, delivered to me at ............ this ............ day of ............, 19......

(Signature of accused)

---

[1] For instructions as to preparation of copies of record, see back cover or appendix 9f, MCM, 1969 (Rev.).

[2] If copy of record prepared for accused contains matters requiring security protection, see paragraph 82g, MCM, 1969 (Rev.).

# CERTIFICATE IN LIEU OF RECEIPT

.................................................................................... , .............................. 19 ..............
*(Place)* *(Date)*

I certify that on this date delivery of a copy of the above-described record of trial, including all exhibits admitted in evidence or descriptions thereof, was made to the accused,

.................................................................... , at .................................................................... ,
*(Name of accused)* *(Place of delivery)*

by ........................................................................................................ , and that the
*(Means of effecting delivery, i.e., mail, messenger, etc.)*

receipt of the accused had not been received on the date this record was forwarded to the convening authority. The receipt of the accused will be forwarded as soon as it is received.

....................................................................................
*(Signature of trial counsel)*

> This certificate is to be used only when it is impossible to secure a receipt from the accused before the original record is forwarded to the Convening Authority. If the accused signs the receipt before the record goes to the Convening Authority this page should not be used and must be pulled out of the record.

## PROCEEDINGS OF A SPECIAL COURT-MARTIAL

The military judge called the Article 39(a) session to order.
~~The court met~~ (at) ~~(on board)~~[1]

Service Schools Command, Naval Training Center, Orlando, Florida,

at 0900 hours, 16 March 1974, pursuant to the following orders.[2]

A copy of the convening order and all modifications thereto should be stapled to this page, i.e., Convening Order (Top Sheet), and any subsequent modifications beneath the convening order in chronological order (latest on top). If the accused requests enlisted membership, the original request must be stapled beneath the convening order and modifications, if any. If the accused requests trial by military judge alone, this request should be stapled on this page beneath the Convening Order and modifications, if any.

---

[1] *Delete inapplicable language.*

[2] *Insert a copy of the convening orders and copies of any amending orders. Any request of an enlisted accused for enlisted court members will be inserted immediately following the convening orders, together with any declaration of the non-availability of such enlisted persons. Any request for trial by the military judge alone (53d(2), 61g) or, in a special court-martial, any statement that qualified defense counsel (6c) or military judge (15b) could not be obtained, will also be inserted at this point.*

## PERSONS PRESENT[1]

Commander James E. Toms, JAGC, U. S. Navy, MILITARY JUDGE;
Lieutenant Overton S. Anderson, JAGC, U. S. Navy, TRIAL COUNSEL;
Lieutenant Peter R. Cherneff, JAGC, U. S. Navy, ASSISTANT TRIAL COUNSEL;
Lieutenant Robert L. Magielnicki, JAGC, U. S. Navy, DEFENSE COUNSEL;
Lieutenant Bruce R. Douglas, JAGC, U. S. Navy, ASSISTANT DEFENSE COUNSEL.

## PERSONS ABSENT[2]

MEMBERS.

The following named accused (was) ~~(were)~~ present:

Seaman Richard P. Vailancourt, U. S. Navy.

The detailed reporter, Legalman First Class Larry D. Hoffart, U. S. Navy, was sworn.

---

[1] List MJ, if any, and all members of the court, prosecution, and defense as present or absent, as announced by the trial counsel. Only rank or grade and name will be shown unless service number is necessary to distinguish between two persons.

[2] Reasons for absence before arraignment will not be shown (par. 41d, MCM)

## LEGAL QUALIFICATIONS OF PROSECUTION

TC: The legal qualifications and status as to oaths of all members of the prosecution are correctly stated in the convening order.

## PRIOR PARTICIPATION BY MEMBER OF PROSECUTION

TC: No member of the prosecution named in the convening order has acted as investigating officer, military judge, court member, or a member of .........

## INQUIRY CONCERNING ARTICLE 38(b)

MJ: Have you informed the accused of his rights concerning counsel as set forth in Article 38(b) and paragraph 48f?

DC: Yes, sir, but I request that he be advised again under Article 38(b).

MJ: Seaman Vailancourt, in accordance with the provisions ...............

ACCUSED: No, sir.

MJ: Seaman Vailancourt, you are further advised of your right ...........

ACCUSED: ..........

MJ: If you are represented by counsel of your own selection .............

ACCUSED: ..........

## DEFENSE COUNSEL INTRODUCED

MJ: By whom will the accused be defended?

DC: The accused is to be defended by Lieutenant .........................

## QUALIFICATIONS OF DEFENSE COUNSEL

MJ: Will counsel representing the accused state whether ..................

DC: ..........

MJ: ..........

TC: All personnel of the court required to be present have been sworn.

### NATURE OF THE CHARGES

TC: The general nature of the charges in this case is ....................

TC: If the military judge is aware of any matters which he believes may be a ground for challenge by either side against him, he should now state ......

TC/DC may question MJ concerning probable basis for challenge for cause.

TC: The prosecution has no challenge for cause against the military judge.

TC: Does the accused desire to challenge the military judge for cause?

DC: .........

### INQUIRY INTO REQUEST FOR TRIAL BEFORE MJ ALONE

MJ: The accused has not submitted a request in writing for trial before a military judge alone. Has he been advised of his right ..................

DC: He has.

MJ: Does the accused desire to request trial by me alone?

DC: He does not.

### REQUEST FOR ENLISTED MEMBERSHIP

MJ: Has the accused been advised of his right to have enlisted persons....

DC: He has.

If the accused has not been so advised, the MJ should ensure that he is properly advised and given an opportunity to submit a request should he desire to do so.

MJ: Has the accused made a request in writing that the membership ........

TC: The accused has not made such a request.

MJ: Seaman Vailancourt, do you understand your right to request ..........

ACCUSED: I do, sir.

MJ: Understanding this right, was it your decision not to request ........

ACCUSED: It was, sir.

OR

TC: The accused has made such a request which is herewith submitted ......

MJ: This request will be attached to the convening orders ................

**ARRAIGNMENT**

MJ: The accused will now be arraigned.

TC: All parties to the trial have been furnished with a copy of the charges. Does the accused desire that they be read?

DC: The accused desires that the charges be read.

At this point the TC would read the charges and specifications on which the accused is to be tried, with the name and description of the accuser, the affidavit, and the reference for trial. They must be copied verbatim in the record at this point. See pages 7 and 8.

OR

DC: The accused waives the reading of the charges.

MJ: The reading of the charges may be omitted. The original charge sheet will be inserted at this point in the record.

When charges, specifications, accuser's affidavit and reference for trial are actually read in court you would record and transcribe this information at the point in the record where it occurs. If the accused waives reading of the charges and the MJ/PRES states that the original charge sheet will be inserted at this point in the record, or if the MJ/PRES states that the charges, accuser's affidavit and reference for trial will be copied into the record at this point, the remainder of this page must be diagonally lined out as shown. If charges, etc., are copied verbatim into the record, these pages would be numbered (see pages 7 and 8). If the charge sheet is inserted into the record at this point, it should not be assigned a page number.

The accused in this sample case is not charged with all the following violations of the UCMJ. Rather, these charges and specifications are set down here to show the manner in which they should be numbered (including "Additional" charges).

Charge I: Violation of the Uniform Code of Military Justice, Article 86.

Specification: In that Seaman Richard P. Vailancourt, U. S. Navy, Service Schools Command, Naval Training Center, Orlando, Florida, did, at or about 0730 hours, 1 January 1974, without proper authority, absent himself from his unit, to wit: Service Schools Command, located at the Naval Training Center, Orlando, Florida, and did remain so absent until at or about 1300 hours, 2 February 1974.

Charge II: Violation of the Uniform Code of Military Justice, Article 121.

Specification 1: In that Seaman Richard P. Vailancourt, U. S. Navy, Service Schools Command, Naval Training Center, Orlando, Florida, did, ..............

Specification 2: In that Seaman Richard P. Vailancourt, U. S. Navy, Service Schools Command, Naval Training Center, Orlando, Florida, did, ..............

Additional Charge I: Violation of the Uniform Code of Military Justice, Article 128.

Specification 1: In that Seaman Richard P. Vailancourt, U. S. Navy, Service Schools Command, Naval Training Center, Orlando, Florida, did, ..............

Specification 2: In that Seaman Richard P. Vailancourt, U. S. Navy, Service Schools Command, Naval Training Center, Orlando, Florida, did, ..............

Additional Charge II: Violation of the Uniform Code of Military Justice, Article 129.

Specification: In that Seaman Richard P. Vailancourt, U. S. Navy, Service Schools Command, Naval Training Center, Orlando, Florida, did, ..............

When there is more than one charge, the charges should be numbered, using the Roman numerals, I, II, etc. When there is more than one specification under a charge, the specifications under that charge should be numbered, using the Arabic numerals 1, 2, etc. Additional charges are numbered in the same manner as the original charge; a single added charge is designated simply "Additional Charge," but if more than one, they are numbered Additional Charge I, Additional Charge II, etc. Specifications under additional charges are designated as prescribed above. The term "Additional" is not used in connection with the specifications.

| NAME, GRADE, AND ORGANIZATION OF ACCUSER | SIGNATURE |
|---|---|
| ROBERT Q. LEWIS, ENS, U. S. Navy<br>Service Schools Command, NTC, Orlando, Fla. | /s/ Robert Q. Lewis |

## AFFIDAVIT

Before me, the undersigned, authorized by law to administer oaths in cases of this character, personally appeared the above-named accuser this 2nd day of March 19 74. He signed the foregoing charges and specifications and attested under oath that he is a person subject to the Uniform Code of Military Justice, that he either has personal knowledge of or has investigated the matters set forth therein, and that the same are true in fact, to the best of his knowledge and belief.

CDR, JAGC, USN
Service Schools Command, NTC, Orlando, Fla. /s/ J. W. Robertson
GRADE AND ORGANIZATION OF OFFICER SIGNATURE

Authorized by Sec 2502 JAG Manual J. W. ROBERTSON
OFFICIAL CHARACTER, AS ADJUTANT, SUMMARY COURT, ETC. TYPED NAME

*(MCM, 29e, and Article 30a and 136)*

Officer administering oath must be a commissioned officer.

## 1st INDORSEMENT

Service Schools Command, Naval Training Center, Orlando, Florida 3 March 1974
(Designation of command of convening authority) (Place) (Date)

Referred for trial to the special court-martial convened by my convening order serial 18 of 15 January 19 74, subject to the following instructions: None

~~BY~~ ~~of~~
~~(Convening authority)~~

W. A. RAWLS
CAPT, USN, Commanding Officer /s/ W. A. Rawls
NAME, GRADE, AND OFFICIAL CAPACITY OF OFFICER SIGNING SIGNATURE

---

When a verbatim record is prepared, this page will follow the charges and specifications, which are copied verbatim into the record at the point indicated in the sidenote. "Arraignment--charges and specifications read," on page AB-13, MCM, 1969 (Rev.). It should not be used in preparing a summarized record if the charge sheet is inserted at the point indicated in the referenced sidenote.

TC: The charges are signed by Ensign Robert O. Lewis, U. S. Navy, a person subject to the Code, as accuser; are properly sworn to ...............

TC: The charges were served on the accused by me on 3 March 1974.

MJ: Seaman Vailancourt, I now ask you, how do you plead? Before receiving your pleas, I advise you that any motions to dismiss any charge or to grant other relief should be made at this time.

This completes the arraignment procedure.

MOTIONS

DC: The defense has motions to be made.

DC: The defense moves to dismiss Charge II and its Specification on the ground that the specification fails to allege an offense.

MJ: The session will recess for ten minutes.

SSE The session recessed at 1005 hours, 16 March 1974.

SSE The session was called to order at 1015 hours, 16 March 1974.

MJ: The session will come to order.

TC: All parties who were present when the session recessed are again present.

MJ: The motion is denied.

PLEAS - See Chapter 4 for additional samples.

DC: The accused has no further motion to make at this time and pleads:

| | |
|---|---|
| To the Specification of Charge I: | Not guilty. |
| To Charge I: | Not guilty. |
| To the Specification of Charge II: | Guilty, except the word "steal," substituting therefor the words "wrongfully appropriate"; to the excepted word, not guilty, to the substituted words, guilty. |
| To Charge II: | Guilty. |

MJ: Seaman Vailancourt, I am about to ask you several questions concerning the plea of guilty that has been entered by you through your counsel ........

ACCUSED: ..........

MJ: ..........

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ACCUSED: ...........

MJ: Seaman Vailancourt, I find that you are knowingly, intelligently, and conciously waiving your right .........................................

MJ: Your plea of guilty will be accepted.

MJ: This session is adjourned.

SSE The session adjourned at 1100 hours, 16 March 1974.

COURT CALLED TO ORDER

The court met at Service Schools Command, Naval Training Center, Orlando, Florida, at 0900 hours, 17 March 1974, pursuant to the orders previously inserted in the record.

PERSONS PRESENT

Commander James E. Toms, JAGC, U. S. Navy, MILITARY JUDGE;
Lieutenant Commander John C. Brown, U. S. Navy;
Lieutenant Richard L. O'Brien, U. S. Navy;
Lieutenant (junior grade) Daniel F. Burns, U. S. Navy;
Ensign Patton C. Earthington, U. S. Navy; and
Chief Boatswain W-3 John P. Jones, U. S. Navy, MEMBERS;
Lieutenant Overton S. Anderson, JAGC, U. S. Navy, TRIAL COUNSEL;
Lieutenant Peter R. Cherneff, JAGC, U. S. Navy, ASSISTANT TRIAL COUNSEL;
Lieutenant Robert L. Magielnicki, JAGC, U. S. Navy, DEFENSE COUNSEL;
Lieutenant Bruce R. Douglas, JAGC, U. S. Navy, ASSISTANT DEFENSE COUNSEL.

PERSONS ABSENT

Lieutenant Calvin R. McDougal, U. S. Naval Reserve.

If no persons are absent, indicate by the word "None" indented two spaces from the left margin. THIS ITEM MUST NOT BE LEFT BLANK.

The following named accused was present:

Seaman Richard P. Vailancourt, U. S. Navy.

SSE The detailed reporter, Legalman First Class Larry D. Hoffart, U. S. Navy, had previously been sworn.

TC: The status as to oaths, prior participation, and legal .............

DC: ..........

MJ: Does the accused desire to request trial by me alone?

DC: He does not.

MJ: Has the accused made a request in writing that the membership of this court include enlisted persons?

TC: The accused has not made such a request.

MJ: The members of the court will now be sworn.

TC: The members will be sworn. All persons please rise.

SSE The members of the court were sworn.

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MJ: The court is assembled.

MJ: Unless they are required to be present for other reasons, all persons expecting to be called as witnesses ..................................

**NATURE OF CHARGES**

TC: The general nature of the charges in this case is ....................

**CHALLENGE PROCEDURE**

TC: The records of this case disclose grounds for challenge of Chief Warrant Officer John P. Jones, U. S. Navy for the following reason: ........

MJ: Mr. Jones, have you anything to say?

MEMBER (CWO JONES): I cannot dispute the challenge, sir.

MJ: The challenge is sustained. Chief Warrant Officer Jones, you are excused from sitting as a member of this court.

**SSE** Chief Warrant Officer Jones, the challenged member, withdrew from the courtroom.

> When a challenged member or any individual or witness withdraws from the courtroom (other than spectators), the reporter must always record and transcribe such movement.

TC: If any member of the court or the military judge is aware of any matters which he believes may be a ground for challenge by either side ......

TC: The prosecution has no further challenges for cause.

TC: The prosecution has no peremptory challenge.

TC: Does the accused desire to challenge any member of the court or the military judge for cause?

DC: The accused challenges Lieutenant Richard L. O'Brien ..................

MJ: Lieutenant O'Brien, do you wish to make a statement with respect .....

MEMBER (LT O'BRIEN): Yes. I've never acted in such a capacity ..........

DC: With the permission of the court, the defense wishes to examine Lieutenant O'Brien with regard to the challenge.

MJ: Lieutenant O'Brien, please take the stand.

SSE Lieutenant O'Brien, the challenged member, was sworn to testify concerning his competency to act as a member of the court, and testified as follows:

SSE DIRECT EXAMINATION

SSE Questions by the prosecution:

Q. State your full name, rank, armed force, and present duty station.
A. Richard Lee O'Brien, Lieutenant, U. S. Navy, attached to Service Schools Command, Naval Training Center, Orlando, Florida.

Q. Are you a member of this court?
A. I am.

SSE Questions by the defense:

Q. Lieutenant O'Brien, what is your primary duty ........................
A. I am the Command's ..................................................

Q. ..........
A. ..........

DC: No further questions.

TC: The prosecution has no questions. Does the court wish to examine this challenged member?

MJ: There are no questions by the court.

MJ: Lieutenant O'Brien, you are excused and may resume your seat as a member of the court.

SSE Lieutenant O'Brien, the challenged member, resumed his seat as a member of the court.

TC: Does the defense have any further evidence to offer?

DC: The defense does not, but I do wish to present a brief argument in support of this challenge. Gentlemen, ....................................

TC: ..................argument..........................................

TC: Does the defense wish to present further evidence?

DC: The defense does not.

MJ: The challenge of Lieutenant O'Brien is not sustained.

TC: Does the accused desire to make any other challenge for cause?

DC: No.

TC: Does the accused wish to exercise his right to one peremptory challenge against any member?

DC: The accused challenges Lieutenant O'Brien peremptorily.

MJ: Lieutenant O'Brien, you are excused from sitting as a member of the court in this case.

SSE Lieutenant O'Brien, the challenged member, withdrew from the courtroom.

SSE The members reseated themselves according to rank.

### ARRAIGNMENT

MJ: The accused was arraigned at a session conducted on 16 March 1974. The trial counsel will now distribute copies of the charges.

SSE The trial counsel did as directed.

> The trial counsel should present to the members copies of only those charges and specifications upon which the accused has been arraigned unless distributed earlier with the consent of the defense counsel.

DC: The defense has no motions to be made.

### PLEAS - See Chapter 4 for additional samples.

TC: At a session of this trial held on 16 March 1974, the accused entered the following pleas:

| | |
|---|---|
| To the Specification of Charge I: | Not guilty. |
| To Charge I: | Not guilty. |
| To the Specification of Charge II: | Guilty, except the word "steal," substituting therefor the words "wrongfully appropriate"; to the excepted word, not guilty, to the substituted words, guilty. |
| To Charge II: | Guilty. |

### OPENING STATEMENTS

TC: The prosecution has an opening statement ............................

### PROSECUTION'S CASE-IN-CHIEF

TC: With the consent of the accused, the prosecution and defense stipulate that the accused is Seaman Richard P. Vailancourt, U. S. Navy, and that on 1 January 1974, he was attached to ..........................................

MJ: Seaman Vailancourt, do you join in this stipulation?

ACCUSED: Yes, sir, I do.

MJ: The stipulation is accepted.

PROSECUTION WITNESS

SSE Seaman Robert C. Brown, U. S. Navy, was called as a witness for the prosecution, was sworn, and testified as follows:

SSE DIRECT EXAMINATION

SSE Questions by the prosecution:

Q. State your full name, rate, armed force ................................
A. Robert Charles Brown, Seaman, USN, ......................................

Q. ..........
A. ..........

SSE CROSS-EXAMINATION

SSE Questions by the defense:

Q. ..........
A. ..........

SSE REDIRECT EXAMINATION

SSE Questions by the prosecution:

Q. ..........
A. ..........

SSE RECROSS-EXAMINATION

SSE Questions by the defense:

Q. ..........
A. ..........

SSE EXAMINATION BY THE COURT

SSE Questions by the military judge:

Q. ..........
A. ..........

SSE Questions by a court member (LTJG BURNS):

Q. ..........
A. ..........

MJ: No further questions by the court.

SSE The witness was duly warned and withdrew from the courtroom.

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SSE Ensign Robert Q. Lewis, U. S. Navy, was called as a witness for the prosecution, was sworn, and testified as follows:

SSE DIRECT EXAMINATION

SSE Questions by the prosecution:

Q. State your full name, rank, armed force, ..................................
A. Robert Quade Lewis, Ensign, U. S. Navy, ..................................

Q. Do you know the accused, and if so, will you point to him if you see him in the courtroom, and state, if you know, his name and duty station?
A. Yes, that's Richard P. Vailancourt there (pointing in direction of accused). Vailancourt is attached to ......................................

> The ad lib "(pointing in direction of accused)" is a responsibility of the reporter. However, if the trial counsel makes a statement such as "Let the record reflect that the witness pointed to the accused" or some similar statement, the reporter's note need not be transcribed.

Q. ..........
A. ..........

TC: Request the reporter mark this document for identification.

REPORTER: This will be Prosecution Exhibit 1 for identification.

Q. ..........
A. ..........

TC: Prosecution Exhibit 1 for identification is offered in evidence as Prosecution Exhibit 1 and permission is requested to ........................

TC: I now show Prosecution Exhibit 1 for identification to the accused for his inspection and possible objection (hands to defense).

DC: No objection (returning to prosecution).

MJ: Prosecution Exhibit 1 for identification is admitted in evidence as Prosecution Exhibit 1 and a true copy may be substituted. The reporter is directed to delete the words "for identification."

REPORTER: The words "for identification" have been deleted.

Q. ..........
A. ..........

TC: The prosecution has no further question. Does the defense ...........

DC: The defense does not.

TC: Are there any questions by the court?

MJ: Apparently not. The witness is excused subject to recall. In view of your testimony, no warning seems necessary.

SSE The witness withdrew from the courtroom.

TC: The prosecution rests.

DC: At this time, the defense moves for a finding of not guilty to Charge I and the Specification thereunder on the ground that .......................

TC: .................argument............................................

DC: .................argument............................................

MJ: The motion for a finding of not guilty of the charge and specification thereunder is denied.

MJ: The court will recess for 15 minutes.

SSE The court recessed at 1040 hours, 17 March 1974.

SSE The court was called to order at 1055 hours, 17 March 1974.

MJ: The court will come to order.

TC: All parties to the trial who were present when the court recessed are again present in court, except Ensign Patton C. Earthington, U. S. Navy, who is absent, having accidentally injured himself during the recess, and is now hospitalized.

MJ: Since the absence of Ensign Earthington places the court below a legal quorum, the court will adjourn. The trial counsel will notify the convening authority. We shall resume when the trial counsel notifies us as to the convening authority's action.

SSE The court adjourned at 1057 hours, 17 March 1974.

SSE The court was called to order at 1300 hours, 17 March 1974.

MJ: The court will come to order.

TC: All parties to the trial who were present when the court ............. Lieutenant William Roy, U. S. Naval Reserve, is now present and has been detailed to the court by the convening authority ............................

TC: A copy of the order detailing Lieutenant Roy will be attached to the order convening the court which is to be inserted in the record.

SSE Lieutenant Roy, the newly detailed member of the court, was sworn.

TC: The records of the case disclose no grounds for challenge ............

TC: If any member of the court or the military judge is aware of any matters which he believes may be a ground for challenge .....................

MJ: Let the record show that no member disclosed any such facts.

TC: The prosecution has no challenge for cause.

TC: The prosecution does not desire to exercise its right to a peremptory challange against the new member.

DC: The defense does not desire to challenge the new member for cause.

MJ: The record of all prior proceedings in this case which were held in the presence of the court members will be read to the new member by the reporter.

SSE The reporter did as directed.

MJ: The proceedings having been read to date, the defense may ...........

DEFENSE'S CASE IN REPLY

DC: The defense has no opening statement.

SSE Boatswain's Mate First Class Dale Francis, U. S. Navy, was called as a witness for the defense, was sworn, and testified as follows:

SSE DIRECT EXAMINATION

SSE Questions by the prosecution:

Q. State your full name, rate, organization ..............................
A. Dale Francis, Boatswain's Mate First Class, U. S. Navy, ..............

Q. If you know the accused, please state his name and point to him .......
A. The accused is Seaman Vailancourt, and he's sitting right over there.

TC: I request that the record show the witness pointed to the accused.

MJ: The record will so show.

SSE Questions by the defense:

The actual direct examination of a defense witness begins here and is conducted by the defense counsel.

Q. You say that you know the accused. ....................................
A. Yes, sir. He was stationed on the YTB with me.........................

Q. ..........

TC: I object to that last question on the ground that it .................

MJ: The objection of trial counsel is overruled. Francis, you may .......

A. ..........

DC: The defense has no further questions.

TC: The prosecution does not desire to cross-examine this witness. Does the court wish to examine this witness?

MJ: The court has a question for the witness.

SSE EXAMINATION BY THE COURT

SSE Questions by the military judge:

Q. Francis, how long have you known the accused, Vailancourt?
A. ..........

Q. ..........
A. ..........

MJ: There are no further questions by the court.

TC: The prosecution has no questions. Does the defense have any further questions?

DC: No questions.

SSE The witness was duly warned and withdrew from the courtroom.

ACCUSED AS A WITNESS

DC: The accused elects to take the stand and testify as a witness in his own behalf. His testimony will be limited to Charge I and the Specification thereunder.

EXPLANATION OF RIGHTS

> The MJ may assume that the accused has been correctly advised of his rights to testify. However, when he considers it necessary, he may, out of the hearing of the court members, inquire of the DC as to whether the accused has been advised of his rights, or give the explanation. Such hearing must be duly recorded and transcribed by the reporter.

MJ: Very well. Proceed, Mr. Defense Counsel.

SSE Seaman Richard P. Vailancourt, U. S. Navy, was called as a witness for the defense, was sworn, and testified as follows:

SSE DIRECT EXAMINATION

SSE Questions by the prosecution:

Q. State your full name, ..................................................
A. Richard Paul Vailancourt, ..............................................

SSE Questions by the defense:

Q. ..........
A. ..........

DC: The defense has no further questions.

TC: I have a few that I would like to ask.

SSE

### CROSS-EXAMINATION

SSE Questions by the prosecution:

Q. ..........
A. ..........

TC: No further questions. Does the defense desire to further examine this witness?

DC: The defense does not.

TC: Does the court wish to examine this witness?

MJ: The court does not.

MJ: The witness is excused. You may resume your seat at the counsel table.

SSE The witness resumed his seat at the counsel table.

DC: The defense rests.

TC: The prosecution has no further evidence to offer. Does the defense have any further evidence to offer?

DC: It does not.

TC: Does the court wish to have any witnesses called or recalled?

MJ: (Consulting with member LT ROY) It does. The court would like to recall Dale Francis.

SSE Boatswain's Mate First Class Dale Francis, U. S. Navy, was recalled as a witness for the court, was reminded that he was still under oath, and testified as follows:

SSE

### DIRECT EXAMINATION

SSE Questions by the prosecution:

Q. Are you the same Dale Francis who testified earlier in this trial?
A. Yes, I am.

SSE Questions by the military judge:

Q. You stated earlier that Vailancourt was one of your best workers ......
A. Yes, sir, it is.

Q. ..........
A. ..........

MJ: No further questions.

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There is no page 20
Next page 21

SSE

### CROSS-EXAMINATION

SSE Questions by the defense:

Q. ..........
A. ..........

DC: I have no further questions.

SSE

### CROSS-EXAMINATION

SSE Questions by the prosecution:

Q. ..........
A. ..........

TC: No further questions.

MJ: There are no further questions by the court.

MJ: The witness is excused, subject to recall.

SSE The witness was reminded of his previous warning and withdrew from the courtroom.

MJ: The court does not desire to examine any further witnesses. The prosecution may proceed.

### ARGUMENTS

TC: The prosecution makes the following opening argument ...............

DC: In reply to the prosecution's argument, ............................

TC: In summing up, ..................................................

MJ: Has the prosecution anything further to offer?

TC: It has not.

MJ: Has the defense anything further to offer?

DC: It has not.

### INSTRUCTIONS ON THE FINDINGS

MJ: Gentlemen of the court. When this court closes to vote on its findings, each of you must resolve the ultimate issue of the guilt or innocence of the accused in accordance with the law, ......................
.........................................................................

You are advised that the accused has entered a plea of guilty that was accepted by me to Charge II and the Specification thereunder. No further proof of evidence of this offense need be introduced ........................

I will now instruct the court as required by Article 51(c) of the ..........
.........................................................................................

The court is advised that, in order to find the accused guilty ............
.........................................................................................

Note the manner in which the following instructions should be set down in the record by the reporter.

(1) That, at the time and place alleged, the accused absented .............

(2) That such absence was without proper authority from anyone competent...

The court is further advised in accordance with Article 51(c):

First, that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

Second, that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt shall be resolved ...........

Third, that if there is a reasonable doubt, ...............................

Fourth, .........................................................................

The final determination as to the weight of the evidence .................

MJ: The court will be closed.

SSE The court closed at 1400 hours, 17 March 1974.

SSE The court opened at 1414 hours, 17 March 1974.

MJ: The court will come to order.

TC: All parties to the trial who were present when the court closed are now present.

PRES: Let the record indicate that during the closed session of this court, no member of the court, including the president, had access to or used, the Manual for Courts-Martial ................................................

It is customary at this point for the accused and his counsel to stand and face the court.

FINDINGS - See Chapter 4 for additional samples.

PRES: Seaman Richard P. Vailancourt, U. S. Navy, it is my duty as president of this court to inform you that the court ......................... finds you:

Of the Specification, Charge I: Guilty.
Of Charge I: Guilty.

Of the Specification, Charge II: Guilty, except the word "steal," substituting therefor the words "wrongfully appropriate"; to the excepted word, not guilty, to the substituted words, guilty.
Of Charge II: Guilty.

EVIDENCE OF PREVIOUS CONVICTIONS - Presentencing procedure begins at this point.

MJ: The court will now hear the personal data concerning ..................

TC: The first page of the charge sheet shows the following data ..........

NAME OF ACCUSED: VAILANCOURT, Richard P.
SOCIAL SECURITY ACCOUNT NUMBER: 123 45 6789.
RATE: Seaman.
ORGANIZATION AND ARMED FORCE: Service Schools Command.....................
..........
..........

The trial counsel usually reads the above data directly from the charge sheet, so it is good practice for the reporter to check his record with the charge sheet at this point.

TC: Does the accused have any objection to the data as read?

DC: He does not.

TC: I have evidence of two previous convictions of offenses...............

SSE Ensign Robert O. Lewis, U. S. Navy, was recalled as a witness for the prosecution, was reminded that he was still under oath, and testified as follows:

SSE DIRECT EXAMINATION

SSE Questions by the prosecution:

Q. Are you the same Ensign Robert O. Lewis.................................
A. I am.

Q. ..........
A. ..........

Q. Refer to the service record of the accused and state if there is a page 6(1) "Court Memorandum" therein containing an entry relating to .............
A. There is (handing document to prosecution).

TC: Request that the reporter mark this exhibit for identification.

REPORTER: This will be Prosecution Exhibit 2 for identification.

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Q. Does the entry on Prosecution Exhibit 2 for identification ..........
A. It does.

Q. ..........
A. ..........

TC: Prosecution Exhibit 2 for identification is offered in evidence as Prosecution Exhibit 2 and permission is requested to withdraw it at the conclusion of the trial and substitute a true copy therefor.

TC: I now show Prosecution 2 for identification to the defense .........

DC: No objections (returning to prosecution).

MJ: Prosecution Exhibit 2 for identification is admitted in evidence as Prosecution Exhibit 2 and a true copy may be substituted. The reporter is directed to delete the words "for identification."

REPORTER: The words "for identification" have been delered.

Q. Read Prosecution Exhibit 2.
A. ..........
..........
..........
..........

TC: I have no further questions of this witness. Does the defense ......

DC: The defense does not.

TC: Are there any questions by the court?

MJ: Apparently not. The witness is excused.

SSE The witness withdrew from the courtroom.

At this time the TC may present to the MJ any personnel records of the accused or copies or summaries thereof as provided in paragraph 75d MCM. The MJ will determine what information from these records is relevant to the imposition of an appropriate sentence. If before court members, the TC will read the relevant information to them or have the documents marked as exhibits, made a part of the record, and presented to the court members.

## MITIGATION AND EXTENUATION

The MJ may assume that the accused has been correctly advised of his rights to testify in extenuation and mitigation. However, when he considers it necessary, he may, out of the hearing of the members (Article 39(a) Session), inquire of the DC as to whether the accused has been advised of his rights, or he himself may explain these rights. If the defense is NOT a qualified lawyer, these rights must be explained in an out of court hearing and must be transcribed verbatim by the reporter similar to the following example.

MJ: An Article 39(a) session is required.

MJ: The court will recess for ten minutes.

SSE The court recessed at 1420 hours, 17 March 1974.

SSE The military judge called the Article 39(a) session to order at Service Schools Command, Naval Training Center, Orlando, Florida, at 1422 hours, 17 March 1974.

MJ: This Article 39(a) session will come to order. Let the record show that during the recess, this session is being held out of the presence of the members of the court. It is attended by the military judge, the accused, counsel for both sides, and the reporter.

MJ: Seaman Vailancourt, the prosecution has concluded .................... As the accused in this case you have these rights as a witness:

First, you may be sworn and take the stand ..............................

Second, you may remain silent, that is, say nothing at all ................

MJ: Seaman Vailancourt, do you understand your right to .................

ACCUSED: Yes, sir.

SSE The session adjourned at 1430 hours, 17 March 1974.

> If no out of court hearing is held at this point, the MJ would make a statement similar to the following:

MJ: Does the defense have any matters in extenuation or ................

DC: The accused desires to make an oral unsworn statement at this time....

MJ: You may proceed.

ACCUSED: ....................unsworn statement..........................

> An alternate method for making an unsworn statement may be made by the accused and defense counsel in question and answer form as shown below:

DC: Vailancourt, would you like to explain to the court why ..............

ACCUSED: Yes, sir. Well, I remember that the Boat's had said ............

DC: You didn't have any intention of ....................................

ACCUSED: No, sir. I knew that ...........................................

TC: I have no evidence in rebuttal to this unsworn statement.

MJ: Does either side have anything further?

Next page 25a

DC: No, sir.

TC: The prosecution does not.

### INSTRUCTIONS ON THE MAXIMUM PERMISSIBLE PUNISHMENT

MJ: Very well, I will now instruct the court as to the maximum sentence which may be imposed in this case. The maximum punishment which may ........

The court is further advised that when deliberating on an ................. ...............................................................................

MJ: The court will be closed. The trial counsel will remove all trial guides, Manuals for Courts-Martial, and JAG Manuals from the courtroom.

SSE The trial counsel did as directed.

SSE The court closed at 1435 hours, 17 March 1974.

SSE The court opened at 1458 hours, 17 March 1974.

MJ: The court will come to order.

TC: All parties to the trial who were present when the court closed.......

PRES: Let the record indicate that during the closed session..............

### ANNOUNCEMENT OF THE SENTENCE

PRES: Seaman Richard P. Vailancourt, U. S. Navy, it is my duty ........... ............................................................................... sentences you:

> To be discharged from the service with a bad-conduct discharge, to be confined at hard labor for three months, to forfeit $25.00 per month for three months, and to be reduced to the grade of pay grade E-1.

### ADJOURNMENT

MJ: Has the prosecution any other cases to try at this time?

TC: I have nothing further.

MJ: The court will adjourn to meet on future call.

SSE The court adjourned at 1500 hours, 17 March 1974.

OR

MJ: Has the prosecution any other cases to try at this time?

TC: Yes, sir, it has. Counsel is ready to proceed with the trial of Robert C. James, Yeoman Third Class. U. S. Navy.

MJ: Very well. Before we get into that case, the court will recess for ten minutes.

**SSE** The court recessed at 1500 hours, 17 March 1974.

## AUTHENTICATION OF RECORD OF TRIAL

in the case of

Seaman Richard P. Vailancourt, U. S. Navy, Service Schools Command, Naval Training Center, Orlando, Florida

J. E. Toms
J. E. TOMS

CDR, JAGC, USN
*(Military Judge)*[1]

24 March 19 74

I have examined the record of trial in the foregoing case.

R. L. Magielnicki
R. L. MAGIELNICKI

LT, JAGC, USN
*(Defense Counsel)*

24 March 19 74

RULES FOR AUTHENTICATION

By general or special court-martial with members and a military judge. Authenticated by the military judge, or in his absence because of death, disability, or absence, by the trial counsel. In the event of absence of trial counsel for the above reasons, then record is authenticated by a member.

By general or special court-martial consisting of only a military judge. Authenticated by the military judge, or by trial counsel in the absence of the military judge for the above reasons, or by the court reporter in the event of absence of the military judge and trial counsel for the above reasons.

By special court-martial without a military judge. Authenticated by the president, or in his absence for above reasons, the trial counsel, or in the event of absence of trial counsel and the president, then a member.

27

This page is always assigned a page number

SERVICE SCHOOLS COMMAND
Naval Training Center
Orlando, Florida

26 March 1974

In the foregoing case of Seaman Richard P. Vailancourt, U. S. Navy, only so much of the sentence as provides for bad-conduct discharge, confinement at hard labor for two months, forfeiture of $25.00 per month for two months and reduction to the grade of pay grade E-1 is approved and will be duly executed, but the execution of that portion thereof adjudging bad-conduct discharge is suspended for the period of confinement and six months thereafter, at which time, unless the suspension is sooner vacated, the bad-conduct discharge shall be remitted without further action. The Naval Correctional Center, Naval Training Center, Orlando, Florida, is designated as the temporary place of confinement. The forfeitures shall apply to pay becoming due on and after the date of this action.

Synopsis of the accused's prior conduct as required by Section 0123c, JAG Manual:

The previous conduct record of Seaman Vailancourt indicates: Conviction by Summary Court-Martial on 6 January 1973 for willfully disobeying a lawful command of his superior officer for which a sentence of reduction from SN to SA was adjudged and approved. Conviction by Summary Court-Martial on 7 April 1973 for ten days unauthorized absence for which a sentence to forfeit $40.00 and confinement for 20 days was adjudged and approved.

In addition to the two previous convictions by Summary Court-Martial considered by the court in this case, the accused was awarded two weeks restriction to limits as the result of Captain's Mast on 2 February 1973 for unauthorized absence of two hours.

The accused is not entitled to any awards, commendations or decorations except the National Defense Service Medal.

The record is forwarded for action under Article 65(b), Uniform Code of Military Justice.

W. A. Rawls
W. A. RAWLS
Captain, U. S. Navy
Commanding Officer, Service Schools Command
Orlando, Florida

Example of CA's action, including synopsis of accused's prior conduct.

## ADMINISTRATIVE REMARKS

See Art. B-2105, BuPers Manual

SHIP OR STATION
Service Schools Command, Naval Training Center, Orlando, Florida

1 Jan 1974: On unauthorized absence from 0730 this date. Intentions unknown.

/s/ Robert O. Lewis
ROBERT O. LEWIS
Ensign, U. S. Navy
Personnel Officer
By direction of the Commanding Officer

A true copy. Attest:

O. S. Anderson
O. S. ANDERSON
LT, JAGC, USN
Trial Counsel

> The trial counsel should attest the authenticity of prosecution exhibits attached to the record when copies are inserted in lieu of the originals.

| NAME (Last, First, Middle) | SERVICE NO. | BRANCH AND CLASS |
|---|---|---|
| VAILANCOURT, Richard Paul | 123 45 6789 | USN |

ADMINISTRATIVE REMARKS—NAVPERS 601-13 (Rev. 12-61) GPO 880-934 13 6

PROSECUTION EXHIBIT 1

## INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

**USE OF FORM** - This form and MCM, 1969 *(Rev.)*, Appendix 9a, will be used by the trial counsel and the reporter as a guide to the preparation of the record of trial in general and special court-martial cases in which a verbatim record is prepared. Air Force use this form and departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized. Army and Navy use DD Form 491 for records of trial in general and special court-martial cases in which a summarized record is authorized. Inapplicable words of the printed text will be deleted.

**COPIES** - See MCM, 1969 *(Rev.)*, Appendices 9f *(for verbatim record)* and 10d *(for summarized record)*. The convening authority may direct the preparation of additional copies.

**ARRANGEMENT** - When forwarded to the appropriate Judge Advocate General or to the supervisory authority pursuant to Article 65(c), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 5, 6, and 13(c) will be inserted by the convening or reviewing authority, as appropriate, and items 8 and 11 will be inserted by either trial counsel, or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover *(chronology sheet)* of DD Form 490.

2. Request of accused for appellate defense counsel, if applicable.

3. Briefs of counsel submitted after trial, if any *(Art. 38(c))*.

4. DD Form 494, "Court-Martial Data Sheet."

5. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is verbatim and in 4 copies when it is summarized.

6. When required, signed review of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

7. DD Form 458, "Charge Sheet" *(unless included at the appropriate place in a summarized record)*.

8. Congressional inquiries and replies, if any.

9. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

10. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

11. Requests by counsel and action of the convening authority taken thereon *(e.g., requests concerning delay, witnesses and depositions)*.

12. Records of former trials.

13. Record of trial in the following order:

    (a) Index sheet with reverse side containing receipt of accused for copy of record or certificate in lieu of receipt.

    (b) Record of proceedings in court, including Art. 39(a) sessions, if any.

    (c) Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.

    (d) Exhibits admitted in evidence.

    (e) Exhibits not received in evidence: The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.

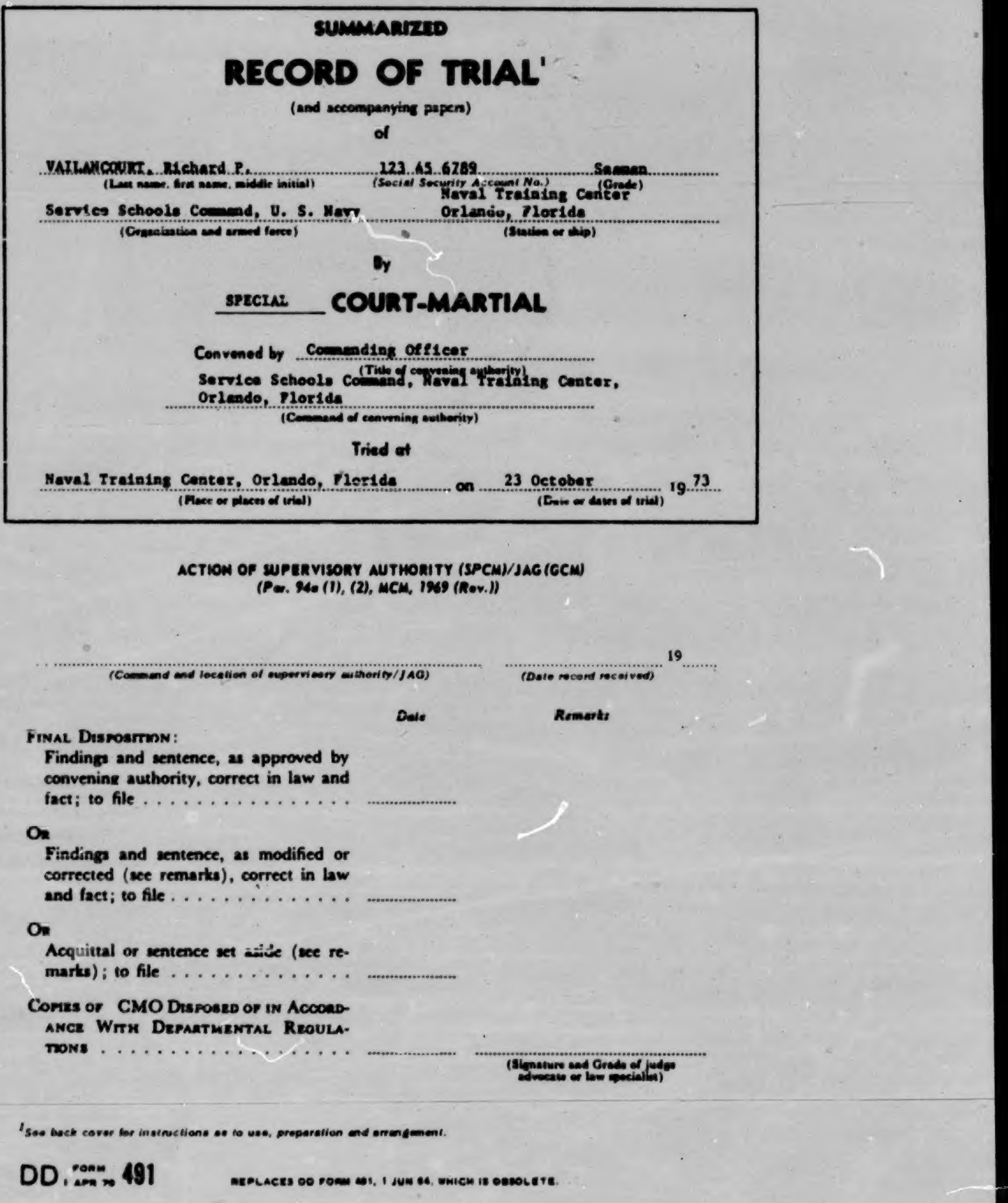
    (f) Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence *(real or documentary)*, and briefs of counsel submitted at trial.

14. Back cover sheet of DD Form 490.

U.S. GOVERNMENT PRINTING OFFICE 1971 O—449-[illegible]

## APPENDIX II

# SUMMARIZED RECORD OF TRIAL



**SUMMARIZED**

## RECORD OF TRIAL[1]

(and accompanying papers)

of

VAILANCOURT, Richard P. (Last name, first name, middle initial) 123 45 6789 (Social Security Account No.) Seaman (Grade)

Service Schools Command, U. S. Navy (Organization and armed force) Naval Training Center Orlando, Florida (Station or ship)

By

SPECIAL **COURT-MARTIAL**

Convened by Commanding Officer (Title of convening authority)

Service Schools Command, Naval Training Center, Orlando, Florida (Command of convening authority)

Tried at

Naval Training Center, Orlando, Florida (Place or places of trial) on 23 October (Date or dates of trial) 19 73

**ACTION OF SUPERVISORY AUTHORITY (SPCM)/JAG (GCM)**

*(Par. 94a (1), (2), MCM, 1969 (Rev.))*

(Command and location of supervisory authority/JAG) ........ (Date record received) ........ 19 ......

| | *Date* | *Remarks* |
|---|---|---|
| FINAL DISPOSITION: | | |
| Findings and sentence, as approved by convening authority, correct in law and fact; to file . . . . . . . . . . . . . . . . | ........ | |
| OR | | |
| Findings and sentence, as modified or corrected (see remarks), correct in law and fact; to file . . . . . . . . . . . . . . | ........ | |
| OR | | |
| Acquittal or sentence set aside (see remarks); to file . . . . . . . . . . . . . . | ........ | |
| COPIES OF CMO DISPOSED OF IN ACCORDANCE WITH DEPARTMENTAL REGULATIONS . . . . . . . . . . . . . . . . | ........ | ........<br>(Signature and Grade of judge advocate or law specialist) |

---

[1] See back cover for instructions as to use, preparation and arrangement.

DD FORM 1 APR 70 491 REPLACES DD FORM 491, 1 JUN 64, WHICH IS OBSOLETE.

## CHRONOLOGY SHEET [1]

In the case of RICHARD P. VAILANCOURT
(Name of accused)

Date of alleged commission of earliest offense tried: 10 October 19 73

Date record forwarded to The Judge Advocate General:[2] 29 October 19 73

J. W. Robertson
J. W. ROBERTSON, Commander, JAGC, U. S. Navy
*(Signature and rank of staff judge advocate or legal officer)*

| | | *Date*<br>19 73 | *Cumulative Elapsed Days*[3] |
|---|---|---|---|
| 1. Accused restricted, arrested, or confined by military authority[4] | | -- | 0 |
| 2. Charges preferred *(date of affidavit)* | | 15 OCT | 0 |
| 3. Article 32 investigation *(date of report)*[5] | | -- | 0 |
| 4. Charges received by convening authority | | 16 OCT | 1 |
| 5. Charges referred for trial | | 16 OCT | 1 |
| 6. Sentence or acquittal | | 23 OCT | 8 |
| Less days: | | | |
| Accused sick, in hospital, or or AWOL | 0 | | |
| Delay at request of defense | 0 | | |
| Total authorized deduction[6] | 0 | | |
| 7. Net elapsed days to sentence or acquittal | | | 8 |
| 8. Record received by convening authority *(if other than GCM authority in Item 9)* | | 24 OCT | 9 |
| Action [7] | | 29 OCT | 14 |
| 9. Record received by officer authorized to convene GCM [2] | | | |
| Action [2] | | | |

Remarks:

---

[1] In a case forwarded to The Judge Advocate General, the staff judge advocate or legal officer is responsible for completion of the Chronology Sheet. Trial counsel should report any authorized deductions and reasons for unusual delay in the trial of the case.

[2] Or supervisory authority under Article 65(c), MCM, 1969 *(Rev.)*, par. 94a(1), (2).

[3] In computing days between two dates, disregard first day and count last day. The actual number of days in each month will be counted.

[4] Item 1 is not applicable when accused is not restricted, arrested or confined, or when he is in confinement under a sentence of court-martial at time charges are preferred. Item 2 will be the zero date if Item 1 is not applicable.

[5] May not be applicable to trial by special court-martial.

[6] Only this item may be deducted.

[7] If sentence, as approved by convening authority under Item 8, does not involve BCD, Items 1 to 8 will be completed, and chronology signed by such convening authority or his representative.

SUMMARIZED

# RECORD OF TRIAL

of

VAILANCOURT, Richard P. 123 45 6789 Seaman
(Last name, first name, middle initial) (Social Security Account No.) (Grade)

Service Schools Command, U. S. Navy Naval Training Center Orlando, Florida
(Organization and armed force) (Station or ship)

By

## SPECIAL COURT-MARTIAL

**Convened by** Commanding Officer
(Title of convening authority)

Service Schools Command, Naval Training Center, Orlando, Florida
(Command of convening authority)

**Tried at**

Service Schools Command, Naval Training Center, Orlando, Florida on 23 October 19 73
(Place or places of trial) (Date or dates of trial)

### COPIES OF RECORD[1]

1 copy of record furnished the accused as per attached certificate or receipt.

0 copy(ies) of record forwarded herewith.

### RECEIPT FOR COPY OF RECORD[2]

I hereby acknowledge receipt of a copy of the above-described record of trial, delivered to me at Service Schools Command, Naval Training Center, Orlando, Florida this 29th day of October, 19 73

Richard P Vailancourt
RICHARD P. VAILANCOURT
(Signature of accused)

I hereby acknowledge receipt of a copy of the above-described record of trial, delivered to me at ......................................... this .................. day of .................., 19......

.........................................
(Signature of accused)

---

[1] *For instructions as to preparation of copies of record, see back cover or appendix 91, MCM, 1969 (Rev.).*

[2] *If copy of record prepared for accused contains matters requiring security protection, see paragraph 82g, MCM, 1969 (Rev.)*

# CERTIFICATE IN LIEU OF RECEIPT

.............................................................................................., ................................ 19 ............
(Place) (Date)

I certify that on this date delivery of a copy of the above-described record of trial, including all exhibits admitted in evidence or descriptions thereof, was made to the accused,

.......................................................................... at ........................................................................,
(Name of accused) (Place of delivery)

By ............................................................................................................., and that the
(Means of effecting delivery, i.e., mail, messenger, etc.)

receipt of the accused had not been received on the date this record was forwarded to the convening authority. The receipt of the accused will be forwarded as soon as it is received.

.......................................................................................
(Signature of trial counsel)

This certificate should be used only when it is impossible to secure a receipt from the accused before the original record is forwarded to the Convening Authority. If the accused signs the receipt before the record goes to the Convening Authority, this page should not be used and must be pulled out of the record.

Proceedings of a SPECIAL court-martial

**SESSION WITH COURT-MEMBERS**

The court was called to order (at) ~~(on board)~~ Service Schools Command, NAVTRACEN, Orlando, Fla., at 0910 hours, 23 October, 19 73.[1] (pursuant to the following orders) ~~([illegible])~~

A copy of the convening order and all modifications thereto must be stapled to this page, i.e., Convening Order (Top Sheet) -- and any subsequent modifications beneath the convening order in chronological order (latest on top). If the accused requests enlisted membership, the original request must be stapled beneath the convening order and modifications, if any.

---

[1] *The time and date of the beginning and ending of each session of the court should be noted.*

[2] *Here insert a copy of the convening orders and copies of any amending orders. Any request of an enlisted accused for enlisted court members will be inserted immediately following the convening orders, together with any declaration of the nonavailability of such enlisted persons. Any request for trial by the MJ alone (53d(2), 61g; para. references are to MCM, 1969 (Rev.)) or statement that qualified defense counsel (6c) or military judge (15b) could not be obtained will also be inserted at this point. If the above documents were previously inserted in the record of an Art. 39(a) session of the case, they need not be reinserted at this point.*

**PERSONS PRESENT**[1]

Commander Roy L. Mo[illegible]k, U. S. Navy;
Lieutenant Commander John P. Smith, U. S. Navy;
Lieutenant Jerry C. Jones, U. S. Navy;
Lieutenant Robert T. McKenna, U. S. Naval Reserve;
Senior Chief Yeoman Larry E. Lewis, U. S. Navy; and
Yeoman First Class Gerald B. Brown, U. S. Navy, MEMBERS;
Lieutenant Overton S. Anderson, JAGC, U. S. Navy, TRIAL COUNSEL;
Lieutenant Commander John J. Martens, JAGC, U. S. Navy, DEFENSE COUNSEL.

**PERSONS ABSENT**[2]

NONE.

The accused and the following *(regularly detailed defense counsel)* ~~[illegible] by him~~ were present.

Lieutenant Commander John J. Martens, JAGC, U. S. Navy.

The following detailed *(reporter)* ~~[illegible]~~ *(was)* ~~[illegible]~~ sworn.[3]

Legalman First Class John E. Harriger, U. S. Navy.

~~[illegible]~~

~~[illegible]~~

The trial counsel stated that the legal qualifications and status as to oaths of all members of the prosecution were correctly stated in the convening orders except as indicated below.

The trial counsel further stated that no member of the prosecution had acted as investigating officer, military judge, court member, or as a member of the defense in this case, or as counsel for the accused at a pretrial investigation or other proceeding involving the same general matter except as indicated below.[4]

---

[1] *List members and counsel by rank or grade and name.*

[2] *Reasons for absence before assembly will not be shown (paragraph 41 d, MCM.)*

[3] *Applicable only when a reporter or interpreter is used.*

[4] *[illegible] member of the prosecution is disqualified because of prior participation, the disqualifying fact will be shown, together with the action taken under 61 g.*

The defense counsel stated that the legal qualifications and status as to oaths of all members of the defense were correctly stated in the convening orders except as indicated below.[1]

The *(military judge) (president)* ascertained that the accused had been informed of his right to be defended by legally qualified counsel certified by The Judge Advocate General, at no expense to him. The *(military judge) (president)* asked the accused if he understood this right. The accused responded that he did.[2]

The *(military judge) (president)* ascertained that the accused had been informed of his rights concerning counsel as set forth in Article 38(b). The *(military judge) (president)* asked the accused if he understood that he had the right to be represented by civilian counsel if the accused provided him; that he had the right to be represented by military counsel of his own selection if reasonably available, and if he did have counsel of his own selection, his detailed counsel *(and assistant defense counsel)* would act as associate counsel if the accused so desired. The accused responded that he understood his rights with respect to counsel.[3]

The defense counsel stated that no member of the defense had acted as the accuser, a member of the prosecution, investigating officer, military judge, or member of the court in this case except as indicated below.[4]

```
This page should not be used and must be pulled from the record.
Applicable summarized paragraphs taken from this page are typed
on page 3.
```

The following detailed members of the defense were excused at the express request of the accused.

The military judge ascertained that the accused had been advised of his right to request trial by the military judge alone and that the accused *(did not desire) (desired)* to submit such a request.[5] The military judge, after ascertaining that the accused's request was made voluntarily and understandingly, *(approved)*[6] *(disapproved)*[7] the accused's request that he be tried by the military judge alone.

---

[1] *Legal qualifications of a counsel for the defense not shown in the convening orders, including individual counsel, will be shown.*

[2] *The record should reflect that the accused was afforded the opportunity to be defended by qualified counsel, declined qualified counsel, or that qualified counsel could not be obtained. Delete if accused represented by detailed qualified counsel.*

[3] *If the accused is represented by civilian counsel or military counsel of his choice, that part of the inquiry need not be conducted and the inapplicable words should be deleted.*

[4] *If a member of the defense has acted as a member of the prosecution, the record will show that he was excused and withdrew from the court. If a member of the defense acted in another capacity, the record will show that the (military judge) (president) explained to the accused that this counsel could represent him only at his express request, and that the accused so requested, or that suitable action was taken, either by excusing the particular counsel or by adjournment pending the procurement of a counsel satisfactory to the accused (61f(4), MCM). App. 8a and 8b show the procedure to be taken.*

[5] *Omit if trial is by Special court-martial without a military judge.*

[6] *If the military judge approves the accused's request for trial by military judge alone, the record should reflect that the military judge immediately announced that the court was assembled. The proceedings following assembly should then be summarized, using the applicable pages of this summarized record.*

[7] *If the military judge disapproves the accused's request for trial by military judge alone, the fact of such disapproval must be recorded, and if the military judge gives any reason for this disapproval, the reason should be summarized.*

The president then advised the accused of his rights in accordance with Article 38(b), UCMJ, as follows:

PRES: Seaman Vailancourt, in accordance with the provisions contained in Article 38(b), UCMJ, you are advised of your right to be represented by a civilian lawyer, one who is selected personally by you, at your own expense. Do you desire a civilian lawyer?

ACCUSED: No, sir, I do not desire a civilian lawyer.

PRES: Seaman Vailancourt, you are further advised of your right to be represented by a military lawyer of your own selection, provided that lawyer is reasonably available. Do you wish to exercise this right?

ACCUSED: No, sir, I do not.

PRES: Seaman Vailancourt, do you fully understand the rights concerning lawyers that I have just explained to you?

ACCUSED: Yes, sir.

PRES: Seaman Vailancourt, are you presently fully and completely satisfied with the detailed defense counsel, Lieutenant Commander Martens, to represent you during the remaining proceedings in this case?

ACCUSED: Sir, I am satisfied with Commander Martens here to represent me.

PRES: In view of the remarks of the accused, the court is satisfied that Seaman Vailancourt fully understands his rights in this regard, and further determination of the issue raised by Article 38(b) is not necessary.

The defense counsel stated that the legal qualifications and status as to oaths of all members of the defense were correctly stated in the convening orders except as indicated below.

The defense counsel stated that no member of the defense had acted as the accuser, a member of the prosecution, investigating officer, military judge, or member of the court in this case except as indicated below.

The following detailed members of the defense were excused at the express request of the accused: None.

The diagonal line drawn from the left margin to the bottom right margin indicates to reviewers that nothing has been omitted from the record.

The trial counsel announced that the accused *(had)*/~~*(had not)*~~/made a request in writing that the membership of the court include enlisted persons. The defense counsel announced that the accused had been advised of his rights in this respect prior to trial and had stated that he *(did)*/~~*(did not)*~~/ desire enlisted persons as court members.[1]

The ~~[illegible]~~ *(members of the court)* and the personnel of the prosecution and defense who were not previously sworn in accordance with Article 42(a) were sworn.

Each accused was extended the right to challenge any member of the court ~~(or the military judge)~~ for cause and to exercise one peremptory challenge against any member.

The following members of the court/~~(and the military judge)~~ were excused and withdrew for the reasons stated opposite their respective names:

~~Captain ____________ (Excused upon challenge for cause by the accused.)~~
U.S. Navy prosecution.
Lieutenant Jerry C. Jones, *(Excused upon peremptory challenge by the* ~~*accused*~~*.)*
John P. Smith, U. S. Navy
Lieutenant Commander *(Excused upon challenge for cause by the accused.)*

There was no contest with respect to the challenging of any of the members ~~(or military judge)~~ for cause except as indicated below:[2]

**Lieutenant Commander John P. Smith, U. S. Navy, was challenged for cause by the defense on the grounds that he was a brother-in-law and close friend of the accuser and that he had discussed this case with him. Lieutenant Commander Smith stated that he was familiar with the facts in this case, but still felt that he could be fair and impartial in his judgment of the case as a member.**

SSE **The court closed at 1000 hours, 23 October 1973.**

SSE **The court opened at 1005 hours, 23 October 1973.**

**The challenge was sustained.**

---

[1] *The second statement concerning defense counsel's announcement should be omitted if the military judge had previously ascertained at an Article 39(a) session that the accused had been advised of his right to the presence of enlisted members, and if the military judge did not again inquire into this matter at the session with members present.*

[2] *Insert a summary of the proceedings with respect to each contest. For example, if a member or the military judge was challenged for cause, but was not excused from the court, the record will show the grounds for the challenge, a summary of evidence presented, if any, and the action of the military judge or court.*

# Appendix II–SUMMARIZED RECORD OF TRIAL

The accused was arraigned on the following charges and specification: [1]

If the Charges and Specifications are read in court, you must type them verbatim on this page. If the reading of the Charges was omitted nothing need be typed on this page except the page number. Always insert the Charge Sheet after this page.

---

[1] *Insert, following this page, the charge sheet. Use the accused's copy of the charge sheet to prepare his copy of the record. If the arraignment took place at the Article 39(a) session and the accused pleaded there, the record need only reflect—"The military judge announced that the accused had been arraigned at a previous session of the trial held on ____________________ . The accused pleads as follows: ____________________ ." If the accused pleaded guilty at the Article 39(a) session and the findings of guilty were entered, the record should reflect the military judge reported the findings to the members.*

W. A. RAWLS, Captain, U. S. Navy was in command on the date of the reference for trial.
(Name and Rank)

The defense had no motions to present except as indicated below.[1]

The defense made a motion for a continuance on the grounds that the accused's mother, who lives in Lakeland, Florida, desired to attend the trial, but would be unable to leave home for another five days as they were in the middle of orange picking at the time and she had to stay home and help. The motion was denied.

The accused pleaded as follows:

To Charge I and the Specification thereunder: Not guilty.
To Charge II and the Specification thereunder: Not guilty.

> If the accused pleads not guilty to all charges and specifications, the trial would continue as on page 9 and you would line out the rest of this page and pages 7 and 8 would not be used.

OR

The accused pleaded as follows:

To Charge I and the Specification thereunder: Not guilty.
To Charge II and the Specification thereunder: Guilty.

> If the accused pleads guilty to any charge, then the president must explain the meaning and effect of the guilty plea, inquire into the providency of the plea, and advise the accused of the maximum punishment which may be imposed in the case. IT IS RECOMMENDED THAT THIS BE TRANSCRIBED VERBATIM INSTEAD OF USING THE "PLEA OF GUILTY" SUMMARIZED PAGE.
> In this example the accused is pleading guilty to Charge II so normally the testimony on pages 10, 11, and 12 would not be used. It is included here as an example of how testimony might be presented on a not guilty plea.

---

[1] *The substance of any motions made by the defense before pleas are entered will be recorded here, together with the ruling of the court thereon. The substance of any motions made by the defense after pleas are entered will be recorded at the proper chronological point at the record, together with the ruling of the court thereon.*

## PLEA OF GUILTY[1]

The ~~(military judge)~~(*president*) explained fully the meaning and effect of a plea of guilty. He explained to the accused all the elements of the offense(s) to which the accused intended to plead guilty. He explained to the accused that by his plea of guilty the accused waived his right against self incrimination, his right to a trial of the facts by a court-martial, and his right to be confronted by and to cross examine the witnesses against him.

The ~~(military judge)~~(*president*) questioned the accused about each and every element of the offense, what he did or did not do *(and what he intended)*. He asked the accused if he understood that his plea of guilty waived his right against self incrimination, his right to a trial of the facts by a court martial, and his right to be confronted by and to cross examine the witnesses against him.

The accused indicated that he understood the elements of the offense(s), understood his plea of guilty, and understood that the plea of guilty waived his right against self incrimination, his right to a trial of the facts by the court-martial, and his right to be confronted by and to cross examine the witnesses against him. The accused admitted *(acts) (omissions) (states of mind)* encompassing every element of the offense(s) to which the plea of guilty related.

The ~~(military judge)~~(*president*) announced that he found the plea of guilty to be voluntary and made with full knowledge of its meaning and effect. He specifically found that the accused knowingly, intelligently, and consciously waived his rights against self incrimination, to a trial of the facts by a court-martial, and to be confronted by and to cross examine the witnesses against him. Accordingly, he found the plea to be provident and accepted it.[2]

The president advised the accused that the maximum permissable sentence which could be adjudged for the offense of which the accused pleaded guilty was confinement at hard labor not to exceed one month, forfeiture of two-thirds pay per month not to exceed one month, and reduction to the grade of pay grade E-1 and determined that the accused understood the authorized maximum punishment which could be imposed if the guilty plea were accepted.

Although it is recommended that this advice be typed verbatim, some commands may direct that you use this summarized page. Check with your individual command and if it is used, you must add another paragraph to the preprinted page giving the maximum permissible punishment that can be adjudged against the accused. Wording would be as shown above, except the punishments will vary according to the offense.

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[1] *Omit if the accused does not plead guilty.*

[2] *When authorized by regulations of the Secretary concerned, findings of guilty of any charge and specification (except to lesser included offenses) may be entered immediately without vote after a plea of guilty has been accepted and the record should so reflect if this has been done. The findings are entered by the announcement of the military judge or president that the accused has been found guilty in accordance with his plea (70b(1) and appendix 8b). If the plea of guilty is not accepted, the record will so indicate with the reasons therefor. If the accused decides to withdraw his plea of guilty, this will be indicated.*

PRES: I am about to ask you several questions concerning the plea of guilty that has been entered by you through your counsel. You are advised that you need not answer any of the questions which I am about to ask you. You may remain silent if you wish. If, however, you choose not to answer my questions, then your plea of guilty cannot be accepted and the trial will proceed as if you had entered a not guilty plea. You may also consult your counsel concerning any question I may ask you. Do you understand what I have advised you?

ACCUSED: Yes, sir.

PRES: Seaman Vailancourt, through your counsel you have entered a plea of guilty to the following charge and specification:

Out of Uniform in violation of Article 134, UCMJ.

PRES: By pleading guilty, you have admitted, before this court, that you did every act charged and failed to do every omission charged, and you have admitted the existence of every element of the offense to which you have pleaded guilty. I will now explain to you the elements of the offense to which you have pleaded guilty. I will also ask you to explain to me the facts establishing your guilt.

PRES: The elements of the offense to which you have entered a plea of guilty are as follows:

First, that you wrongfully appeared without your hat at the time and place alleged.

Second, that at the time and place alleged you wrongfully appeared wearing white socks; and

Third, that under the circumstances, your conduct in thus appearing was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

PRES: Do you understand the elements of this offense?

ACCUSED: Yes, sir.

PRES: Did you at Service Schools Command on the afternoon of 10 October 1973 appear outside without your hat on?

ACCUSED: Yes, sir.

PRES: Were you wearing white socks with your blue uniform?

ACCUSED: Yes, sir.

PRES: Did you know that you were supposed to wear a hat while outside?

ACCUSED: Yes, sir.

PRES: Were you aware that you were not supposed to wear white socks with your uniform?

ACCUSED: Yes, sir

PRES: You should never enter a plea of guilty to any offense of which you are not, in fact, guilty. A plea of guilty is the strongest form of proof known to the law. If you plead guilty this court could, on the plea of guilty alone, without receiving any evidence, find you guilty and impose sentence. This court will not accept a plea of guilty unless you understand its meaning and effect. You have a perfect legal right to plead not guilty even though you believe you are guilty, and so leave the prosecution with the burden of proving your guilt beyond a reasonable doubt. A plea of guilty will not be accepted unless you realize that by such a plea you admit every element of the offense to which you plead guilty and unless you are pleading guilty because you really are guilty. Do you understand the effect of your pleas of guilty?

ACCUSED: Yes, sir.

PRES: Are you pleading guilty because you are in fact guilty?

ACCUSED: Yes, sir.

PRES: The maximum authorized punishment for the offense to which you have pleaded guilty is confinement at hard labor not to exceed one month, forfeiture of two-thirds pay per month not to exceed one month, and reduction to the grade of pay grade E-1.

In addition, if you are found guilty of Charge I and the Specification thereunder by the court, then the maximum permissible punishment authorized will be confinement at hard labor not to exceed three months, forfeiture of two-thirds pay per month not to exceed three months and reduction to the grade of pay grade E-1.

PRES: Do you understand the maximum authorized punishment which I have just explained?

ACCUSED: Yes, sir.

PRES: Seaman Vailancourt, do you realize that by pleading guilty you are waiving your constitutional right against self-incrimination?

ACCUSED: Yes, sir.

PRES: Do you realize that your plea of guilty waives your right to a trial of the facts by a court-martial?

ACCUSED: Yes, sir.

PRES: Do you realize that your plea of guilty waives your constitutional right to confront the witnesses against you?

ACCUSED: Yes, sir.

PRES: And you nevertheless desire to persist in your plea of guilty?

ACCUSED: Yes, sir.

PRES: Seaman Vailancourt, I find that you are knowingly, intelligently, and consciously waiving your right against self-incrimination, your right to a trial of the facts by this court, and your right to be confronted by the witnesses against you by your plea of guilty.

PRES: Your plea of guilty to Charge II and the Specification thereunder is accepted.

Continuation sheets should be plain 8" x 13" white paper (pages 7, 8, and 9 are examples). A 2 1/2 inch space should be allowed for the top margin to facilitate binding the record.

## PRESENTATION OF PROSECUTION CASE

The trial counsel made ~~(an)~~/(no) opening statement.

The following witnesses for the prosecution were sworn and testified in substance as follows:[1]

SSE Seaman Apprentice John P. Davis, U. S. Navy, Service Schools Command, Naval Training Center, Orlando, Florida.

SSE DIRECT EXAMINATION

I know the accused. His name is Seaman Vailancourt and he's sitting over there (pointing to the accused). We are both attached to Service Schools Command and we live in the same cubicle in barracks 978 here at the Training Center. On 1 October 1973, I was broke and asked Vailancourt to lend me ten until payday. He said he would, but that it would cost me five. I have never borrowed money from his before, but I needed money real bad so I said okay. I've heard the other guys in the barracks talking about Vailancourt running a slush fund.

Upon objection by the defense, so much of the answer of the witness as pertained to what he had heard others talking about a slush fund was stricken.

> Even though matter may be ordered stricken from the record, it is recorded nevertheless and you must not omit transcribing the "stricken" matter into the record.

On 10 October 1973, payday, I paid Vailancourt back $15.00--the $10.00 I had borrowed and the extra $5.00 as interest. Vailancourt did accept the extra $5.00 from me without any offer on my part to pay him extra for the use of the money. That was our bargain.

SSE CROSS-EXAMINATION

Yes, I in effect agreed to pay Vailancourt back $15.00 because I needed the money desperately. Yes, there are other guys in the barracks who operate slush funds.

Upon objection by the prosecution, the answer of the witness as pertained to the operation of slush funds by other personnel was stricken.

I've never had any trouble with Vailancourt before. I always thought we were good friends.

SSE REDIRECT EXAMINATION

I really didn't expect him to charge me interest as we were such good friends.

SSE RECROSS-EXAMINATION

No, I didn t pay him the extra $5.00 as a friendly gesture.

SSE EXAMINATION BY THE COURT

I didn't think that the Navy Relief or Red Cross would loan me the money for only a trip to go see my girl, so I didn't go to them.

SSE The witness was duly warned and withdrew from the courtroom.

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[1] *Unless otherwise prescribed by departmental regulations, the convening authority may direct that testimony be recorded verbatim if a reporter is present. If a witness testifies through an interpreter, that fact will be shown. For manner of recording presentation of defense case, see A10-7, MCM, 1969 (Rev.). Additional testimony will be shown on blank pages immediately following this page.*

Testimony of witnesses must be set forth in summarized form (unless verbatim transcript has been ordered) in first person, present tense, as illustrated in the following examples.

SSE Chief Boatswain's Mate Theodore F. Mulz, U. S. Navy, Service Schools Command, Naval Training Center, Orlando, Florida.

SSE DIRECT EXAMINATION

I'm the Chief Master-at-Arms for Service Schools Command. I know the accused. His name is Seaman Vailancourt. He's sitting right over there (pointing to accused). In the early afternoon of 10 October 1973, Davis came to me and reported that Vailancourt had charged him $15.00 for $10.00. I told him to write him up if he wanted to, as this is a violation of the Command's instructions. In about an hour one of my MAA's--Johnson--came in and wrote up Vailancourt for being outside without a hat and wearing white socks with a blue uniform. Vailancourt followed him in and wanted me to tear up the report slip. I told him he would have to give his sad story to the Discipline Officer, and sent him up to the Discipline Office with an MAA.

SSE CROSS-EXAMINATION

I didn't question Vailancourt at all. I just told him he would have to take the matter of the report slip up with the Discipline Officer.

SSE The witness was duly warned and withdrew from the courtroom.

SSE Boatswain's Mate Second Class Samuel A. Johnson, U. S. Navy, Service Schools Command, Naval Training Center, Orlando, Florida.

SSE DIRECT EXAMINATION

I'm a Master-at-Arms here at Service Schools Command. I know the accused as Seaman Vailancourt. He's sitting over there (pointing to the accused). On the afternoon of 10 October 1973, I looked out the window of the barracks and saw Vailancourt outside without a hat and wearing white socks with the blue uniform. I called him and told him that I was going to write him up. He didn't say anything to me, but started talking to the Chief. I wrote him up for violation of Service Schools Command Instruction 1020.2B.

The prosecution had marked as Prosecution Exhibit 1 for identification and then offered in evidence a duplicate original of Service Schools Command Instruction 1020.2B, which contained restrictions as to wearing white socks with a blue uniform and also contained the requirement that a hat be worn outdoors at all times when in uniform. The defense counsel objected to the admission of this instruction on the grounds that there was no evidence showing that this instruction was still in effect.

SSE The witness was duly warned and withdrew from the courtroom.

After argument by counsel for both sides the president recessed the court to allow the trial counsel time to check the effectiveness of Prosecution Exhibit 1 for identification.

SSE The court recessed at 1020 hours, 20 October 1973.

SSE The court was called to order at 1045 hours, 20 October 1973.

SSE All parties to the trial who were present when the court recessed were again present in court.

SSE Lieutenant (junior grade) Thomas F. Freeman, U. S. Navy, Service Schools Command, Naval Training Center, Orlando, Florida.

SSE DIRECT EXAMINATION

I'm the Administrative Officer of Service Schools Command. I do not know the accused. I am custodian of all effective directives issued by the Commanding Officer. Service Schools Command Instruction 1020.2B is still in effect. I personally authenticated this instruction. This is a reproduction of my signature that appears as authenticating officer on Prosecution Exhibit 1 for identification.

There being no objection, Prosecution Exhibit 1 for identification was admitted in evidence as Prosecution Exhibit 1.

SSE The witness withdrew from the courtroom.

The prosecution rested.

SSE The court recessed at 1125 hours, 20 October 1973.

SSE The court was called to order at 1320 hours, 20 October 1973.

SSE All parties to the trial who were present when the court recessed were again present in court.

The defense counsel made a motion for a finding of not guilty to Charge I and the Specification thereunder. There being no objection, the motion was granted.

## PRESENTATION OF DEFENSE CASE

The defense counsel made *(an)* ~~*(no)*~~ opening statement.

The following witnesses for the defense were sworn and testified in substance as follows:

SSE Seaman Richard P. Vailancourt, U. S. Navy, Service Schools Command, Naval Training Center, Orlando, Florida.

SSE DIRECT EXAMINATION

I'm the accused in this case. I was only going to go across the street to barracks 84 so I didn't think I would get caught if I didn't wear a hat. I was wearing white socks as black socks make my feet sweat excessively.

SSE CROSS-EXAMINATION

Yes, the street I had to cross could be called the main street on the base. No, I had no other reason to wear white socks other than my feet sweating.

SSE The witness resumed his seat at the counsel table.

The defense rested.

> If the accused does not testify the below statement should be shown at this point in the record provided the president does in fact advise the accused in this regard:
>
> "The accused was advised by the president of his right to testify or to remain silent and elected to remain silent."
>
> OR
>
> "The president ascertained from the defense counsel that the accused had been advised of his right to testify or remain silent and the accused elected to remain silent."

> Numbering pages when a page number has been skipped or omitted.

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There is no page 14
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The prosecution made *(an)* argument.

The defense made *(an)* argument.

The prosecution made *(a)* closing argument.

*(The president)* instructed the court in accordance with paragraph 73 of the MCM including the elements of each offense, the presumption of innocence, reasonable doubt, and burden of proof as required by Art. 51(c).[1]

Neither prosecution nor defense having anything further to offer, the court was closed at 1430 hours, 20 October, 1973. *Thereafter the court opened[2] at 1445 hours. The president announced that, in closed session and upon secret written ballot, *(Two-thirds of the members present at the time the vote was taken concurring in each finding of guilty, the accused was found:*

Of Charge II and the Specification thereunder: Guilty.

> If a Findings Worksheet is used in the closed session, and if the president directs that it be attached to the record, you should use the following standard stock entry to record this: "The president directed that the Findings Worksheet utilized in the closed session of the court be attached to the record as Appellate Exhibit 1."

*All Manuals for Courts-Martial, United States, 1969 (Revised edition), and all other legal authorities were removed from the courtroom during the closed session.

~~The military judge announced the following general and special findings and directed that be appended to the record as appellate exhibit (Filed as opinion or memorandum of the court.) appellate exhibit A copy of each was furnished to counsel for both sides and stated that the special findings or memorandum of decision shall be furnished to the reporter prior to authentication for insertion in the record as appellate exhibit~~

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[1] *In a trial by the military judge alone, there would be no instructions given. Any request for special finding should be summarized, and if submitted in writing, the request should be attached as an appellate exhibit.*

[2] *"Parties to the trial" must be accounted for when court opens after being in closed session, but the accounting need not be shown in a summarized record. After a recess or adjournment, record should show, "All parties to the trial who were present when the court (adjourned) (recessed) were again present (except." The reason for the subsequent absence of any member who was present at assembly must be shown MCM, 1969 (Rev.).*

The trial counsel read the data as to age, pay, service, and restraint of the accused as shown on the charge sheet. The defense counsel stated that ~~[illegible]~~ the accused had been removed from restriction on 16 October 1973.

)

~~(The trial counsel stated that he had no evidence of previous convictions to offer.)~~ (The attached evidence of previous convictions was offered) (and admitted) (in evidence as Prosecution Exhibit 2 .) The defense counsel stated that (the accused had no objection to the evidence of previous convictions.)

( The prosecution and defense entered into a stipulation with the consent of the accused as to the authenticity of the contents of Prosecution Exhibit 2. The president of the court inquired of the accused if he understood the nature and meaning of the stipulation and the accused replied in the affirmative and concurred in its introduction.

)

After the accused was advised by the ~~(military judge)~~ (president) of his right to present evidence in extenuation or mitigation, including the right to remain silent or to make a sworn or unsworn statement, ~~(the defense counsel stated that he had nothing further to offer.)~~ (The defense presented the following matters):

The defense had marked as Defense Exhibit A for identification a letter of commendation that had been awarded the accused by the Commanding Officer, USS MIDWAY (CVA 41) and offered it in evidence. There being no objection, it was admitted in evidence as Defense Exhibit A, and was read to the court.

It was stipulated by and between the defense and trial counsel, with the consent of the accused, that the accused's service record, page 9, showed that at no time had the accused received a mark below 3.8 in Military Behavior and that the lowest mark on this page during the accused's entire enlistment was a 3.4.

It was stipulated by and between the defense and trial counsel, with the consent of the accused, that if Lieutenant Paul A. Olson were present in court, he would take the witness stand, be sworn and testify in substance as follows:

That he is Lieutenant Paul A. Olson, U. S. Navy, attached to the USS MIDWAY (CVA 41) as First Lieutenant.

~~The (military judge) (president) instructed the court that the maximum permissible punishment which could be adjudged for the offense(s) of which the accused had been found guilty was [illegible] and advised the court with respect to the special needs of this case in accordance with paragraph 76 of the MCM.~~[1]

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[1] If the military judge announces what he considers to be the maximum permissible punishment in a case tried by him alone, the record should reflect the stated maximum.

That he knows the accused and has known him for approximately two years and that the accused worked for him in the Deck Division for about one year prior to his transfer to Service Schools Command.

That the accused was one of the most outstanding deck seamen he had ever known and that he would welcome the accused back as a member of his department if the accused were to be reassigned to the same ship in the future.

SSE The following witness for the defense was sworn and testified in substance as follows:

Ensign William A. Morgan, U. S. Navy, Service Schools Command, Naval Training Center, Orlando, Florida.

SSE DIRECT EXAMINATION

I know the accused, Seaman Vailancourt. He is a member of my division. I'm the Special Services Officer for the command. Vailancourt is one of the hardest workers that I have in my division. He's always prompt and needs little supervision. I would hate to lose him for even a few days, as he is one of the few men I can really count on to do his share of the work.

SSE CROSS-EXAMINATION

Yes, I have had to remind Vailancourt on one or two occasions to get a haircut and shine his shoes.

SSE REDIRECT EXAMINATION

No, I wouldn't say his slips in military appearance are intentional. He is so wrapped up in his work at the Gym that he puts this before anything else.

SSE The witness withdrew from the courtroom.

The president instructed the court that the maximum permissible punishment which could be adjudged for the offense of which the accused had been found guilty was: Confinement at hard labor not to exceed one month, forfeiture of two-thirds pay per month not to exceed one month and reduction to the grade of pay grade E-1, and further instructed with respect to the specific facts of this case in accordance with paragraph 76 of the MCM.

PRES: The court is advised that when deliberating on an appropriate sentence you must consider the fact that the accused's service record, page 9, shows that at no time has the accused received a mark in Military Behavior below 3.8 and that the lowest mark on this page during the accused's entire enlistment is a 3.4.

The court is further advised of the fact of the stipulation entered into by counsels with the consent of the accused that if Lieutenant Olson were present he would testify that he has known the accused for approximately two years and that the accused was one of the most outstanding deck seamen he had ever known and that he would welcome him back to his department.

Numbering pages when extra page is inserted (page preceding the inserted page).

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The court is further advised of the testimony under oath of Ensign Morgan who testified that Vailancourt is the hardest worker that he has in his division, that he is always prompt and needs little supervision.

In exercising your discretion in determining the sentence to be adjudged, you should consider all the facts and circumstances of the case. In this regard, you may consider all matters in extenuation and mitigation as well as those in aggravation, whether introduced before or after the findings; evidence admitted as to the background and character of the accused; and the reputation or record of the accused in the service for good conduct, efficiency, fidelity, courage, bravery, or other traits which characterize a good sailor (and the nature and duration of the pretrial restraint).

You are advised that Seaman Vailancourt pleaded guilty to Charge II and the Specification thereunder. A plea of guilty is a matter in mitigation which may be considered along with all the other facts and circumstances in the case. Time, effort, and expense to the Government usually are saved by a plea of guilty. Such a plea also may be a manifestation of repentance and a first step towards rehabilitation.

Numbering pages when extra page is inserted (page inserted).

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# Appendix II–SUMMARIZED RECORD OF TRIAL

Neither the prosecution nor the defense having anything further to offer, the court was closed at 1515 hours, 20 October, 1973* Thereafter, the court opened at 1545 hours, 20 October, 1973. The president announced that in closed session and, upon secret written ballot, two-thirds of the members present at the time the vote was taken concurring, the accused was sentenced to:

Be confined at hard labor for one month and to forfeit $35.00 per month for one month.

~~[illegible]~~[1]

*All Manuals for Courts-Martial, United States, 1969 (Revised edition), and all other legal authorities were removed from the closed session.

The court adjourned at 1600 hours, 20 October, 1973

> If a Sentence Worksheet is used in the closed session, and if the president directs that it be attached to the record, you should use the following standard stock entry to record this: "The president directed that the Sentence Worksheet utilized in the closed session of the court be attached to the record as Appeallate Exhibit 2."

## AUTHENTICATION OF RECORD OF TRIAL

In the case of

Seaman Richard P. Vailancourt, U. S. Navy

Service Schools Command, Naval Training Center, Orlando, Florida

Roy L. Mock
ROY L. MOCK
Commander, U. S. Navy
President ~~[illegible]~~[2]

21 October, 1973

I have examined the record of trial in the foregoing case.

John J. Martens
JOHN J. MARTENS
Lieutenant Commander, JAGC, U. S. Navy
*(Defense Counsel)*

21 October, 1973

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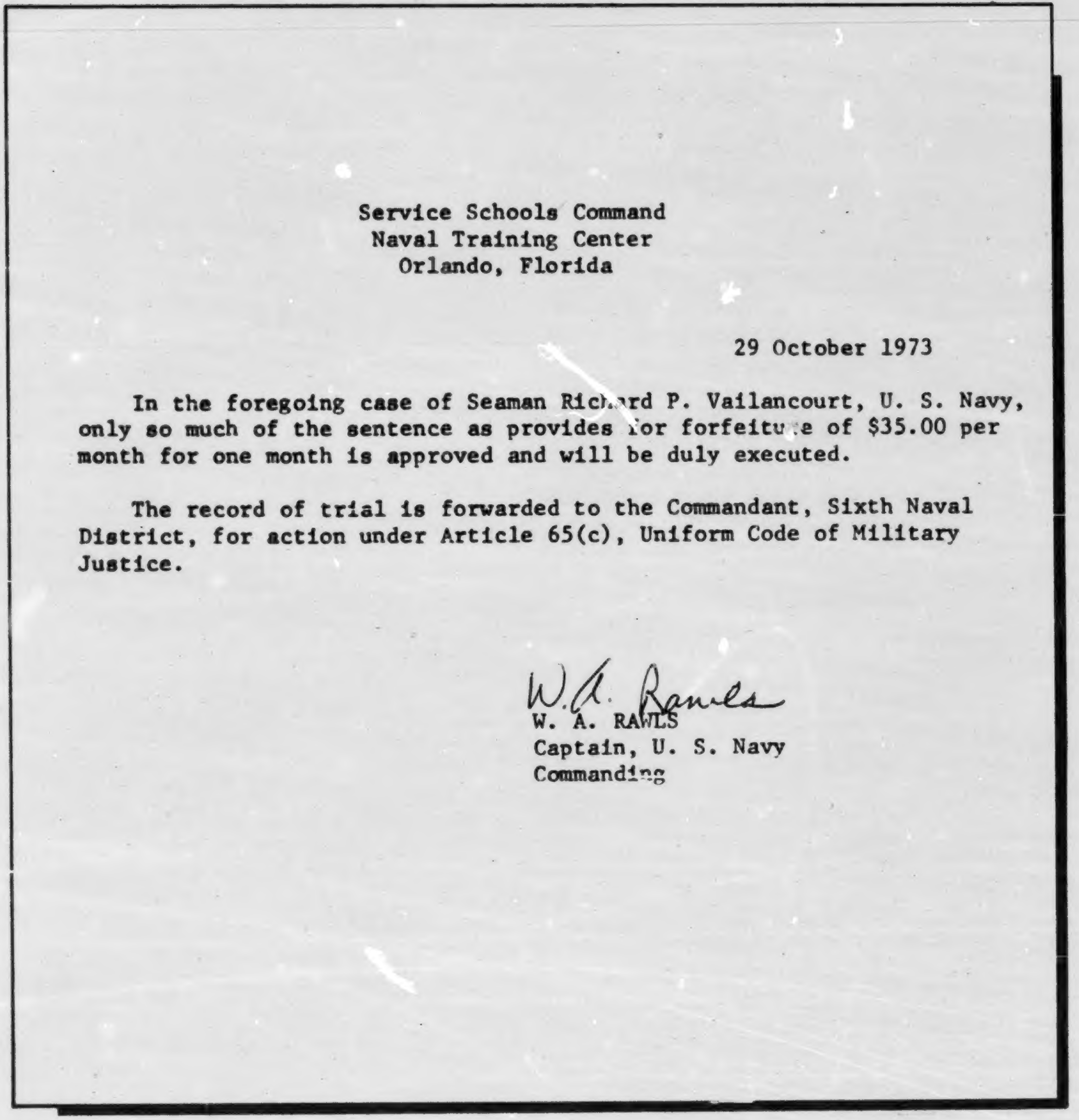
[1] *Use if trial by military judge alone.*

[2] *Delete and insert "President" for special court-martial without a military judge.*



Service Schools Command
Naval Training Center
Orlando, Florida

29 October 1973

In the foregoing case of Seaman Richard P. Vailancourt, U. S. Navy, only so much of the sentence as provides for forfeiture of $35.00 per month for one month is approved and will be duly executed.

The record of trial is forwarded to the Commandant, Sixth Naval District, for action under Article 65(c), Uniform Code of Military Justice.

W.A. Rawls
W. A. RAWLS
Captain, U. S. Navy
Commanding

# Appendix II—SUMMARIZED RECORD OF TRIAL

## INSTRUCTIONS FOR PREPARING AND ARRANGING RECORD OF TRIAL

USE OF FORM - Use this form and MCM, 1969 *(Rev.)*, Appendix 10, or applicable departmental instructions as a guide to the preparation of the record of trial in general and special court-martial cases in which a summarized record is authorized. When an Article 39(a) session is held in a special court-martial with a military judge, DD Form 491-1 should be used and combined with DD Form 491 to complete the record of trial. Those procedures covered at the Article 39(a) session and summarized in DD Form 491-1 will not be resummarized in DD Form 491.

DELETIONS - In preparing the record, inapplicable words of the printed text must be deleted. Deletions may be made by striking over the inapplicable word or phrase, or by ruling it out in ink. When several consecutive lines are to be deleted, a single line, ruled in ink, from upper left to lower right will suffice. No deletion or remark is necessary when there are no exceptions after an item ending "except as indicated below."

RECORDING TESTIMONY - A summarized record need contain only a summarized report of the testimony as indicated in paragraph 83b, MCM, 1969 *(Rev.)*, However, unless otherwise prescribed by departmental regulations, the convening authority may direct that a summarized record contain a verbatim report of the testimony of witnesses if a reporter was appointed and actually served in that capacity throughout the trial.

COPIES - See MCM, 1969 *(Rev.)*, Appendix 10d for summarized record. The convening authority may direct the preparation of additional copies.

ARRANGEMENT - When forwarded to the appropriate Judge Advocate General or to the supervisory authority pursuant to Article 65(c), the record will be arranged and bound with allied papers in the sequence indicated below. Trial counsel is responsible for arranging the record as indicated, except that items 5, 6, and 12(c) will be inserted by the convening or reviewing authority, as appropriate, and items 8 and 11 will be inserted by either trial counsel or the convening or reviewing authority, whichever has custody of them.

1. Front cover and inside front cover *(chronology sheet)* of DD Form 491.

2. Briefs of counsel submitted after trial, if any *(Article 38(c))*.

3. DD Form 494, "Court-Martial Data Sheet."

4. Court-martial orders promulgating the result of trial as to each accused, in 10 copies when the record is of a GCM and 4 copies if it is of a SPCM.

5. When required, signed review of staff judge advocate or legal officer, in duplicate, together with all clemency papers, including clemency recommendations by court members.

6. DD Form 458, "Charge Sheet" *(unless included at the appropriate place in a summarized record)*.

7. Congressional inquiries and replies, if any.

8. DD Form 457, "Investigating Officer's Report," pursuant to Article 32, if such investigation was conducted, followed by any other papers which accompanied the charges when referred for trial, unless included in the record of trial proper.

9. Advice of staff judge advocate or legal officer, when prepared pursuant to Article 34 or otherwise.

10. Requests by counsel and action of the convening authority taken thereon *(e.g., requests concerning delay, witnesses and depositions.)*

11. Records of former trials.

12. Record of trial in the following order:
    a. Index sheet with reverse side containing receipt of accused for copy of record or certificate in lieu of receipt.
    b. Record of proceedings in court.
        (1) Record of Art. 39(a) session at appropriate place in proceedings.
    c. Action of convening authority and, if appropriate, action of officer exercising general court-martial jurisdiction.
    d. Exhibits admitted in evidence.
    e. Exhibits not received in evidence. The page of the record of trial where each exhibit was offered and rejected will be noted on the front of each exhibit.
    f. Appellate exhibits, such as proposed instructions, written offers of proof or preliminary evidence *(real or documentary)*, and briefs of counsel submitted at trial.

13. Back cover sheet of DD Form 491.

☆ U.S. GOVERNMENT PRINTING OFFICE [illegible]

## APPENDIX III

# GLOSSARY OF TERMS IN MILITARY LAW

The following terms are those most frequently encountered in military law which have special legal connotations. The list is by no means complete, nor is it intended as a substitute for an up-to-date Law Dictionary. Further, this glossary is designed solely as a ready reference for the meaning of certain terms; where it has been necessary to explain a term in the language of or in relation to a rule of law, no attempt has been made to set forth a definitive or comprehensive statement of such rule of law.

ABET–To encourage, incite, or set another on to commit a crime. Art. 77, UCMJ.

ACCESSORY AFTER THE FACT–Any person subject to the Code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial or punishment. NOTE: Art. 78, UCMJ, deals with accessories.

ACCESSORY BEFORE THE FACT–One who counsels, commands, procures, or causes another to commit an offense–whether present or absent at the commission of the offense. NOTE: Under Art. 77, UCMJ, an accessory before the fact is a principal.

ACCUSATION–A formal charge against a person, to the effect that he is guilty of a punishable offense, laid before a court having jurisdiction to inquire into the alleged crime.

ACCUSED–One who is charged with an offense under the Code.

ACCUSER–Any person who signs and swears to charges, any person who directs that charges normally be signed and sworn to by another, and any other person who has an interest other than an official interest in the prosecution of the accused. Art. 1(9), UCMJ.

ACQUITTAL–The legal and formal certification of the innocence of a person who has been charged with crime; a deliverance or setting free a person from a charge of guilt.

ACTIVE DUTY–The status of being in the active Federal Service of any of the armed forces under a competent appointment or enlistment or pursuant to a competent muster, order, call or induction.

ACTUAL KNOWLEDGE–A state wherein the person in fact knows of the existence of an order, regulation, fact, etc., in question.

AD HOC–For this; for this special purpose.

ADDITIONAL CHARGES–New and separate charges preferred after others have been preferred against the same accused which are still pending.

AD INTERIM–In the meantime. An officer "AD INTERIM" is one appointed to fill a temporary vacancy.

ADJUDICATE–To determine whether a claim is proper and decide what amount, if any, should be paid the claimant.

ADMIRALTY–That body of law and regulation dealing with civil maritime cases.

ADMISSION–A self-incriminatory statement falling short of a complete acknowledgement of guilt.

AD VALOREM–According to value; "ad valorem" tax is a tax or duty upon the value of the article or thing subject to taxation.

AFFIANT–The person who makes and subscribes an affidavit.

AGENT–A person authorized by another to act for him. One intrusted with another's business.

## Appendix III–GLOSSARY OF TERMS IN MILITARY LAW

AIDER AND ABETTOR–One who shares the criminal intent or purpose of the perpetrator, and hence is liable as a principal. Art. 77, UCMJ.

ALIBI–A defense that the accused *could not* have committed the offense alleged because he was somewhere else when the crime was committed.

ALLEGE–To assert or state in a pleading; to plead in a specification.

ALLEGATION–The assertion, declaration, or statement of a party in a pleading of what he expects to prove.

ALLISION–The running of one vessel into or against another, as distinguished from a collision; i.e., the running of two vessels against each other.

APPEAL–A complaint to a superior court of an injustice done or error committed by an inferior one whose judgment or decision the court above is called upon to correct or reverse. See Appellate Review.

APPELLATE REVIEW–Automatic reconsideration of the records of cases tried by court-martial. Reviewing authorities include the convening authority, GCM authority, the Court of Military Review, and the Court of Military Appeals. The level to which a case proceeds for review is determined by the Code. See Art. 65, 66 and 67, UCMJ.

APPREHENSION–The taking of a person into custody.

ARRAIGNMENT–The reading of the charges and specifications to the accused or the waiver of their reading, coupled with the request that the accused plead thereto.

ARREST–Moral restraint imposed upon a person by oral or written orders of competent authority limiting the person's personal liberty pending disposition of charges. Arrest is *not* imposed as punishment for an offense.

ASPORTATION–A carrying away; felonious removal of goods; refers to one of the ways in which larceny under Art. 121, UCMJ, may be committed.

ASSAULT–An attempt or offer with unlawful force or violence to do bodily harm to another, whether or not the attempt or offer is consummated. Art. 128, UCMJ.

ATTEMPT–An act, or acts, done with a specific intent to commit an offense under the Code, amounting to more than mere preparation, and tending but failing to effect the commission of such offense.

ATTEST–To signify by subscription of his name that the signer has witnessed the execution of the particular instrument.

ATTORNEY, POWER OF–An instrument authorizing another to act as one's agent or attorney. The instrument by which authority of one person to act in place and stead of another as attorney in fact is set forth.

BAD-CONDUCT DISCHARGE–One of two types of punitive discharges that may be awarded an enlisted man; designed as a punishment for bad conduct, rather than as a punishment for serious offenses of either a civil or military nature; may be awarded by GCM or SPCM.

BAIL–To procure the release of a person from legal custody, by undertaking that he shall appear at the time and place designated and submit himself to the jurisdiction and judgment of the court.

BATTERY–An unlawful, and intentional or culpably negligent application of force to the person of another by a material agency and directly or indirectly. Art. 128, UCMJ.

BEYOND A REASONABLE DOUBT–The degree of persuasion based upon proof such as to exclude not every hypothesis or possibility of innocense, but any fair and rational hypothesis except that of guilt; not an absolute or mathematical certainty but a moral certainty.

BIGAMY–The criminal offense of willfully and knowingly contracting a second marriage (or going through the form of a second marriage) while the first marriage, to the knowledge of the offender, is still subsisting and undissolved.

BONA FIDE–In good faith.

BREACH OF ARREST–Going beyond the limits of arrest as set by orders. Art. 95, UCMJ.

BREACH OF PEACE–An unlawful disturbance of the peace by an outward demonstration of a violent or turbulent nature. Art. 116, UCMJ.

BURGLARY–The breaking and entering in the nighttime of the dwelling of another with intent to commit murder, manslaughter, rape, carnal knowledge, larceny and wrongful appropriation, robbery, forgery, maiming, sodomy, arson, extortion, or assault. Art. 129, UCMJ.

CAPITAL OFFENSE–An offense for which the maximum punishment includes the death penalty.

CARNAL KNOWLEDGE–An act of sexual intercourse under circumstances not amounting to rape, by a person with a female who is not his wife, and who has not attained the age of 16 years. Art. 120, UCMJ.

CAVEAT EMPTOR–Let the buyer beware (or take care).

CHALLENGE–A formal objection to a member of a court or the military judge continuing as such in subsequent proceedings. May be either (1) a challenge for cause–such objections based on a fact or circumstance which has the effect of disqualifying the person challenged from further participation in the proceedings, or (2) peremptory challenge–such objection permitted without grounds or basis, except that the military judge cannot be peremptorily challenged.

CHARGE–A formal statement of the Article of the UCMJ which the accused is alleged to have violated.

CHARGE AND SPECIFICATION–A description in writing of the offense which the accused is alleged to have committed; each specification, together with the charge under which it is placed, constitutes a separate accusation.

CHATTEL–An article of personal property; any species of property not amounting to a freehold or fee in land. A thing personal and movable.

CIRCUMSTANTIAL EVIDENCE–Evidence which tends directly to prove or disprove not a fact in issue, but a fact or circumstance from which, either along or in connection with other facts, a court may, according to the common experience of mankind, reasonably infer the existence or nonexistence of another fact which is in the issue, sometimes called indirect evidence.

COLLISION–Striking together of two objects, one of which may be stationary. The act of ships or vessels striking together. In its strict sense, collision means the impact of two vessels both moving, and is distinguished from allision, which designates the striking of a moving vessel against one that is stationary.

COMMAND–(1) An order; (2) any demanding of another to do an act towards commission of a crime. Art. 77, UCMJ.

COMMON TRIAL–A trial in which two or more persons are charged with the commission of an offense or offenses which, although not jointly committed, were committed at the same time and place and are provable by the same evidence.

CONCURRENT JURISDICTION–Jurisdiction which is possessed over the same parties or subject matter at the same time by two or more separate tribunals.

CONFESSION–An acknowledgement of guilt of an offense.

CONFINEMENT–The physical restraint of a person, imposed by either oral or written orders of competent authority, depriving him of freedom.

CONSPIRACY–A combination of two or more persons who have agreed to accomplish, by concerted action, an unlawful purpose or some purpose not in itself unlawful by unlawful means, and, the doing of some act by one or more of the conspirators to effect the object of that agreement.

CONSTRUCTIVE KNOWLEDGE–Knowledge which may be found to have existed when the regulation, notice, fact or directive, etc., which was of so notorious a nature, or was so conspicuously posted or distributed, that the particular accused ought to have known of its existence; knowledge is constructive when it is shown that the accused would in the ordinary course of events, or by the exercise of ordinary care, have secured knowledge of the order, notice of movement, etc.

CONTEMPT–The use of any menacing words, signs, or gestures in the presence of the court, or the disturbance of its proceedings by any riot or disorder; the refusal of a duly subpoenaed civilian witness to qualify, appear, or to testify before a court-martial, court of inquiry or military commission.

CONTRABAND–Goods prohibited or excluded by law or treaty; forbidden, as contraband goods or trade.

CONVENING AUTHORITY–The officer having authority to convene a court-martial and who convened the court-martial in question, or his successor in command.

CONVENING ORDER–The document by which a court-martial is created, which specifies the type of court, and which lists the time and place of meeting, the names of the members, trial and defense counsel and in the case of a general court-martial, the name of the ruling officer and when appropriate, the authority by which the court is created.

CORPUS DELICTI—The body of a crime; facts or circumstances showing that the crime alleged has been committed by someone.

COUNSELLING—Directly or indirectly advising or encouraging another to commit an offense. Art. 77, UCMJ.

COURT-MARTIAL—A military tribunal composed of one or more eligible members of the armed forces (the number depending on the kind of court), the functions of which are to decide whether a person subject to military law has committed a violation of the Uniform Code, and, if it finds him guilty, to adjudge punishment for the offense.

COURT OF INQUIRY—The most formal fact-finding body convened in the armed forces; governed by Article 135, UCMJ.

COURT OF MILITARY APPEALS—A court consisting of three judges appointed from civilian life by the President, by and with the advice and consent of the Senate, for a term of fifteen years—the highest appellate court under the UCMJ.

COURT OF MILITARY REVIEW—A board composed of not less than three officers or civilians, each of whom shall be a member of the bar of a Federal court or of the highest court of a State of the United States, constituted to review the records of certain Courts-Martial. See Art. 66, UCMJ.

CREDIBILITY OF A WITNESS—His worthiness of belief.

CULPABLE—Deserving blame.

CULPABLE NEGLIGENCE—A degree of carelessness greater than simple negligence; a negligent act or omission accompanied by a flagrant or reckless disregard for the foreseeable consequences to others of such act or omission.

CUSTODY—That restraint of free movement which is imposed by lawful apprehension.

CUSTOM—A practice which fulfills the following conditions: (a) it must be long continued; (b) it must be certain or uniform; (c) it must be compulsory; (d) it must be consistent; (e) it must be general; (f) it must be known; (g) it must not be in opposition to the terms and provisions of a statute or lawful regulation or order.

DANGEROUS WEAPON—A weapon used in such a manner that it is likely to produce death or grievous bodily harm.

DEPOSITION—The testimony of a witness taken out of court, reduced to writing, under oath or affirmation, before a person empowered to administer oaths, in answer to interrogatories (questions) and cross-interrogatories submitted by the party desiring the deposition and the opposite party, or based on oral examination by counsel for accused and the prosecution.

DERELICTION IN THE PERFORMANCE OF DUTIES—Willfully or negligently failing to perform assigned duties or performing them in a culpably inefficient manner.

DESIGN—Specifically intended; inferred from conduct so shockingly and grossly devoid of care as to leave room for no reasonable inference but that the result was contemplated as a probable result of the course of conduct followed.

DESTROYED—(As used in Art. 108, UCMJ) Not completely demolished or annihilated, but only sufficiently injured to be useless for the purpose for which it was intended.

DETENTION OF PAY—A less severe form of punishment than a forfeiture in that the amount detained is ultimately returned to the accused when he is separated from service, or within specified period of one year or less.

DIRECT EVIDENCE—Evidence which tends directly to prove or disprove a fact in issue.

DISHONORABLE DISCHARGE—The most severe punitive discharge, reserved for those who should be separated under conditions of dishonor, after having been convicted of offenses usually recognized by the civil law as felonies or of offenses of military nature requiring severe punishment.

DOMINION—Control of property; possession of property with the ability to exercise control over it.

DRUNKENNESS—(1) As an offense under the code, intoxication which is sufficient sensibly to impair the rational and full exercise of the mental and physical faculties; may be caused by liquor or drugs.

(2) As a defense in rebuttal of the existence of intent or knowledge, intoxication which amounts to loss of reason preventing the accused

from knowing the nature of his act or the natural and probable consequences thereof.

DUCES TECUM–Latin, meaning "bring with you." The name of certain species of writs, of which the "subpoena duces tecum" is the most usual, requiring a party who is summoned to appear in court to bring with him some document, piece of evidence, or other thing to be used or inspected by the court.

DUE PROCESS–A course of legal proceedings according to those rules and principles which have been established in our system of jurisprudence for the enforcement and protection of private rights; such as exercise of the powers of the government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe.

DURESS–Unlawful constraint of a person where he is forced to do some act that he otherwise would not have done.

ELEMENTS–The essential ingredients of an offense which are to be proved at the trial; the acts or omissions which form the basis of any particular offense.

ENTRAPMENT–A defense available when actions of an agent of the government intentionally instill in the mind of the accused an intent to commit a criminal offense and when the accused had no notion, predisposition, or intent to commit the offense and was not engaged in an unlawful business which the agent was trying to detect.

EVIDENCE–Information admissible before a court of law which tends to prove or disprove any matter in question or to influence belief respecting it.

EXECUTION OF HIS OFFICE–Engaged in any act or service required or authorized to be done by statute, regulation, the order of a superior, or military usage.

EX POST FACTO LAW–A law passed after the occurrence of a fact or commission of an act which makes the act punishable, imposes additional punishment, or changes the rules of evidence by which less or different testimony is sufficient to convict.

FINE–A type of punishment making the accused liable to the United States for the specified amount of money.

FORMER JEOPARDY–The rule of law that no person shall be tried for the same offense by the same sovereign a second time without his consent. Art. 44, *UCMJ.*

FORMER PUNISHMENT–The rule of law that non-judicial punishment for a minor offense may be interposed as a bar to trial for same offense.

FORFEITURE OF PAY–A type of punishment depriving the accused of all or part of his pay.

GRIEVOUS BODILY HARM–Serious bodily injury; does not include minor injuries, such as a black eye, or a bloody nose, but does include fractured or dislocated bones, deep cuts, torn members of the body, serious damage to internal organs and other serious bodily injuries.

GROSS NEGLIGENCE–A wanton, careless and reckless disregard of the rights and safety of others; and utter indifference to the consequences of one's actions; a total abandonment of the standard of reasonable care coupled with a wanton disregard for the safety of others; that degree of negligence which is substantially higher in magnitude than simple inadvertence, but falls short of intentional wrong.

HABEAS CORPUS–An order from a civil court which causes the custodian of a prisoner to appear before a court to show cause why the prisoner is confined or detained.

HARMLESS ERROR–Error of such quantity and quality that a court of reasonable and conscientious men would have reached the same result had the error not been committed.

INFERENCE–A deduction based upon reason from a fact or facts proved.

INSANITY–See mental capacity, mental responsibility.

IPSO FACTO–By the very fact itself.

JOINT OFFENSE–One committed by two or more persons acting together in pursuance of a common intent.

JURISDICTION–The power of a court to hear and decide a case and to award any appropriate punishment.

KNOWINGLY–With knowledge; consciously, intelligently.

LESSER INCLUDED OFFENSE–An offense necessarily included in the offense charged; an offense containing some but not all of the elements of the offense charged, so that if one or more of the elements of the offense charged is not proved, the evidence may still support a finding of guilty of the included offense.

MATTER IN AGGRAVATION–Any circumstance attending the commission of a crime which increases its enormity.

MATTER IN EXTENUATION–Any circumstance serving to explain the commission of the offense, including the reasons that actuated the accused, but not extending to a legal justification. Opposite to aggravation.

MENTAL CAPACITY–The ability of the accused at the time of trial to understand the nature of the proceedings against him and intelligently to conduct or cooperate in his defense.

MENTAL RESPONSIBILITY–The condition of the accused, at the time of the commission of an offense, that he was so far free from mental defect, disease or derangement as to be able concerning the particular act charged both to distinguish right from wrong and to adhere to the right.

MILITARY DUE PROCESS–Due process under protections and rights granted military personnel by the constitution or laws enacted by Congress.

MILITARY JUDGE–An official of a general or special court-martial detailed in accordance with Article 26, UCMJ.

MINOR OFFENSE–An offense for which confinement for less than one year is authorized; generally also misconduct not involving moral turpitude or any greater degree of criminality than is involved in the average offense tried by summary court-martial.

MISTRIAL–The situation existing when it becomes apparent that either party cannot receive a fair and impartial hearing before the tribunal then sitting.

MORAL TURPITUDE–An act of baseness, vileness, or depravity in private or social duties, which a man owes to his fellow men, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.

MOTION TO DISMISS–A motion raising any defense or objection in bar of trial.

MOTION TO GRANT APPROPRIATE RELIEF–A motion made to cure a defect of form or substance which impedes the accused in properly preparing for trial or conducting his defense.

MOTION TO SEVER–A motion by one or more of two co-accused that he be tried separately from the other or others.

NEGLECT–Omission or failure to do an act or perform a duty due to want of due care or attention.

NEGLIGENCE–The omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do; the absence of due care, the legal standard of which is that which would have been done by a reasonable prudent man in the same or similar circumstances; as used in the UCMJ, the failure to exercise the care, prudence, or attention to duties which the interests of the Government require to be exercised by a prudent and reasonable person under the circumstances.

NONJUDICIAL PUNISHMENT–Punishment imposed under Article 15 for minor offenses, without the intervention of a court-martial.

ON-DUTY–(As used in UCMJ, Article 112) In the exercise of duties of routine or detail in garrison, at a station, or in the field; does not relate to those periods when, no duty being required of them by order or regulations, officers and men occupy the status of leisure known as "off duty" or "on liberty".

PER SE–Taken alone; in and of itself; by itself.

PLEADING–The written formal indictment by which an accused is charged with an offense; in military law, the "pleadings" are called "charges and specifications".

POSSESSION–Physical control over an item of property.

PRESUMPTION–A justifiable inference; a well-recognized example of the use of circumstantial evidence, the weight or effect of which should be measured only in terms of its logical value.

PRIMA FACIE CASE–Introduction of substantial evidence which, together with all proper inferences to be drawn therefrom and all applicable presumptions, reasonably tends to establish every essential element of an offense charged or included in any specification.

PRINCIPAL–(1) One who aids, abets, counsels, commands, or procures another to commit an offense which is subsequently perpetrated in consequence of such counsel, command or procuring, whether he is present or absent at the commission of the offense;

(2) the perpetrator.

PROCEDURAL LAW–The rules of pleading and practice by which rights are accorded and enforced.

PROXIMATE CAUSE–That which, in natural and continuous sequence unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.

PUNITIVE ARTICLES–UCMJ, Articles 77 through 134, which generally describe various crimes and offenses and state how they may be punished.

PUNITIVE DISCHARGE–A discharge imposed as punishment, either a bad conduct discharge or a dishonorable discharge.

RECKLESSLY–With disregard for the probable destructive results of some voluntary act; with culpable negligence.

RESISTING APPREHENSION–An active resistance to the restraint attempted to be imposed by the person apprehending.

RESTRICTION IN LIEU OF ARREST–Moral restraint, less severe than arrest imposed upon a person by oral or written orders limiting him to specified areas of a military command, with the further provision that he will participate in all military duties and activities of his organization while under such restriction.

RESTRICTION TO LIMITS–Restriction imposed as punishment.

REVISION–A procedure to correct an apparent error or omission or improper or inconsistent action of a court-martial with respect to a finding or a sentence.

SELF-INCRIMINATION–The giving of evidence against oneself which tends to establish guilt of an offense.

SLIP LAW–The first officially published form of congressional legislation. The main purpose of slip law publication is speed. Slip law is normally available long before bound volumes containing the legislation are published and disseminated.

SPECIFICATION–A formal statement of specific acts and circumstances relied upon as constituting the offense charged.

STATUTE OF LIMITATIONS–The rule of law which establishes the time within which an accused must be charged with an offense to be tried successfully.

SUBSTANTIVE LAW–That portion of the body of law which contains rights and duties and regulations of the Government, as opposed to that part which contains the rules and remedies by which the substantive law is administered.

SUPERVISORY AUTHORITY–An officer exercising General Court-Martial jurisdiction who acts on SCM and SPCM records after the CA has acted.

TRUE OWNER–The person who, at the time of the taking, obtaining, or withholding of property, had the superior right to possession of the property involved in the light of all conflicting interests therein involved in the particular case.

USAGE–A general habit, mode, or course of procedure.

VERBATIM–In the exact words, word for word.

WANTON–Includes "reckless," but in describing the operation of a vehicle, may in a proper case mean willfulness or a gross disregard of probable consequences, and thus describe a more aggravated offense.

WILLFUL–Deliberate, voluntary, and intentional, as distinguished from acts committed through inadvertence, accident or ordinary negligence.

WRONGFUL–Contrary to law, regulation, lawful order or custom.

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